

*Henry T. Williams
1407 S. 1st St. - Box 1348
Richmond, Va.*

VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 127

ALBERTIS S. HARRISON, JR., ATTORNEY GENERAL
OF VIRGINIA, ET AL., APPELLANTS,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCE-
MENT OF COLORED PEOPLE, A CORPORATION,
AND NAACP LEGAL DEFENSE AND EDUCA-
TIONAL FUND, INCORPORATED.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

FILED JUNE 25, 1958
PROBABLE JURISDICTION NOTED OCTOBER 13, 1958

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 127

ALBERTIS S. HARRISON, JR., ATTORNEY GENERAL
OF VIRGINIA, ET AL., APPELLANTS,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCE-
MENT OF COLORED PEOPLE, A CORPORATION,
AND NAACP LEGAL DEFENSE AND EDUCA-
TIONAL FUND, INCORPORATED.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

INDEX

	Original	Print
Record from the U.S.D.C. for the Eastern District of Virginia, Richmond Division, in Nos. 2435 and 2436		
Complaint of NAACP	2	1
Motion of NAACP to dismiss	20	16
Answer of NAACP	29	20
Complaint of NAACP, Legal Defense and Educa- tional Fund, Inc.	34	24
Motion of NAACP, Legal Defense and Educa- tional Fund, Inc. to dismiss	51	38
Answer of NAACP, Legal Defense and Educa- tional Fund, Inc.	54	40

Record from the U.S.D.C. for the Eastern District
of Virginia, Richmond Division, in Nos. 2435
and 2436—Continued

	Original	Print
Opinion, Soper, J.	59	43
Concurring in part and dissenting opinion, Hutcheson, J.	112	94
Judgment	139	122
Notice of appeal	183	124
Cross-designation	187	127
Clerk's certificate (omitted in printing)	190	128
Transcript of trial proceedings, September 16, 17, 18 and 19, 1957	1	129
Appearances	2	129
Colloquy between court and counsel	2	129
Testimony of W. Lester Banks— direct	8	133
Colloquy between court and counsel	15	137
Testimony of W. Lester Banks— direct	21	140
cross	22	141
Motion to strike testimony and overruling thereof	23	142
Testimony of W. Lester Banks— cross	23	142
Roy Wilkins— direct	61	164
Offers in evidence	63	166
Testimony of Roy Wilkins— cross	79	175
Oliver W. Hill— direct	130	206
cross	137	211
Jack C. Orndorff— direct	170	230
Robert D. Robertson— direct	176	234
Mrs. Sarah Brooks— direct	184	239
cross	190	242
Mrs. Mildred D. Brown— direct	193	244
cross	201	249

Record from the U.S.D.C. for the Eastern District
of Virginia, Richmond Division, in Nos. 2435
and 2436—Continued

	Original	Print
Transcript of trial proceedings, September 16, 17, 18 and 19, 1957—Continued		
Testimony of Mrs. Edith Burton— direct	204	250
Mrs. Margaret I. Finner— direct	207	252
cross	213	255
Mrs. Barbara S. Marx— direct	218	258
cross	224	262
Colloquy between court and counsel	226	263
Testimony of Sarah Patton Boyle— direct	227	264
cross	232	267
Offers in evidence	235	268
Testimony of Thurgood Marshall— direct	243	275
Offers in evidence	249	276
Testimony of Thurgood Marshall— cross	290	301
Martin A. Martin— direct	321	320
cross	325	322
redirect	329	324
Roland D. Ealey— direct	329	325
cross	331	326
S. W. Tucker— direct	336	329
cross	338	330
Plaintiffs rest	341	332
Testimony of Spotswood W. Robinson, III— direct	342	333
cross	358	342
Colloquy between court and counsel	360	344
Testimony of Leonard R. Bland— direct	364	346
cross	369	348

Record from the U.S.D.C. for the Eastern District
of Virginia, Richmond Division, in Nos. 2435
and 2436—Continued

Transcript of trial proceedings, September 16, 17,
18 and 19, 1957—Continued

	Original	Print
Testimony of Alma R. Randle—		
direct	375	352
cross	378	354
Maude E. Walker—		
direct	387	359
cross	389	360
Sarah Elizabeth Hicks—		
direct	395	364
cross	396	365
redirect	402	368
Rosa Bell Davis—		
direct	403	369
cross	406	370
Robert Drakeford—		
direct	410	373
cross	413	375
Moses C. Maupin—		
direct	416	376
C. W. Woodson, Jr.—		
direct	419	378
cross	422	380
redirect	426	383
Herbert B. Adams—		
direct	428	384
cross	432	387
redirect	446	395
recross	447	395
C. T. Coates—		
direct	447	396
cross	453	400
Harold Clark Taylor—		
direct	465	406
cross	469	409
J. F. Culpepper—		
direct	472	411
cross	475	413
Dr. Francis V. Simpkins—		
direct	477	414

Record from the U.S.D.C. for the Eastern District
of Virginia, Richmond Division, in Nos. 2435
and 2436—Continued

Transcript of trial proceedings, September 16, 17,
18 and 19, 1957—Continued

	Original	Print
Statement by Judge Soper	483	417
Testimony of Dr. Francis V. Simpkins—		
(resumed)—		
direct	485	418
R. Bland—		
(recalled)—		
cross	487	419
Offer in evidence	488	420
Testimony of R. Randle—		
(recalled)—		
cross	489	421
Offer in evidence	490	422
Testimony of Mrs. Sarah Elizabeth Hicks—		
(recalled)—		
cross	492	423
Offer in evidence	492	423
Testimony of Rosa Bell Davis—		
(recalled)—		
cross	493	424
Offer in evidence	494	424
Testimony of Maude E. Walker—		
(recalled)—		
cross	494	424
Offer in evidence	497	426
Testimony of Maude E. Walker—		
redirect	498	426
C. Harrison Mann, Jr.—		
direct	500	427
cross	510	434
B. B. Rowe—		
direct	541	452
cross	548	456
Plaintiff's statement in re purpose for which newspaper articles (Plaintiff's Exhibit 5) are offered	550	457

Record from the U.S.D.C. for the Eastern District of Virginia, Richmond Division, in Nos. 2435 and 2436—Continued

Transcript of trial proceedings, September 16, 17, 18 and 19, 1957—Continued

Testimony of Julian A. Sherman—

	Original	Print
direct	557	464
John Patterson—		
direct	561	466
cross	571	472
Otis Scott—		
direct	575	475
Mrs. Viola Neal—		
direct	580	477
cross	583	479
redirect	585	480
George P. Morton—		
direct	589	483
cross	596	487
George R. Fridell, Jr.—		
direct	600	490

Plaintiffs rest	604	492
Colloquy between court and counsel	605	493
Reporter's certificate (omitted in printing)	612	496

Plaintiff's Exhibits:

No. 1—Certificate of Incorporation of the National Association for the Advancement of Colored People, dated May 25, 1911 with certificate of Secretary of State of New York and attachments	613	496
No. 2—Constitution of the NAACP	620	503
No. 3—Constitution and By-Laws for Branches of the NAACP	621	505
No. 6—General Assembly of Virginia's Act to provide for submitting to the qualified electors the question of whether there shall be a convention to revise and amend Section 141 of the Constitution of Virginia, approved December 3, 1955	622	506
No. 7—General Assembly of Virginia's Act approved January 19, 1956	625	511

Record from the U.S.D.C. for the Eastern District of Virginia, Richmond Division, in Nos. 2435 and 2436—Continued

Plaintiff's Exhibits:—Continued

	Original	Print
No. 8—Senate Joint Resolution No. 3, Commonwealth of Virginia General Assembly, adopted February 1, 1956	628	516
No. 9—An ordinance to ordain and proclaim as a revision and amendment of Section 141 of the Constitution of Virginia	632	520
No. 10—Commonwealth of Virginia, General Assembly, House Joint Resolution No. 97	634	522
No. 11—Acts of Assembly Relating to Education, General Assembly of the Commonwealth of Virginia, Extra Session 1956	635	523
No. 12—Address of Thos. B. Stanley, Governor To the General Assembly, Monday August 27, 1956	690	625
No. 13—Article entitled, "Students, Backed by Petition, To End Strike at Farmville"	698	634
Defendant's Exhibit:		
No. 3—Letter from U. S. Tate to Thurgood Marshall, dated December 6, 1955	699	636
Letter from Robert L. Carter to Clerk, U.S.D.C., dated September 26, 1957 pursuant to agreement of counsel with enclosures	702	640
Letter from Oliver W. Hill to Walkley Johnson, Clerk, dated October 7, 1957 pursuant to stipulation of counsel with enclosure	709	645
Order noting probable jurisdiction	711	647

CLERK'S NOTE: R. R. Morton School should be R. R. *Moton* School. Casper should be *Kasper*.

[fol. 2]

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

Civil Action No. 2435

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, a corporation, Plaintiff,

v.

J. LINDSAY ALMOND, Attorney General for the Commonwealth of Virginia; T. GRAY HADDON, Commonwealth's Attorney for the City of Richmond, Virginia; WILLIAM J. CARLETON, Commonwealth's Attorney for the City of Newport News, Virginia; LINWOOD B. TABB, JR., Commonwealth's Attorney for the City of Norfolk, Virginia; WILLIAM J. HASSAN, Commonwealth's Attorney for Arlington County, Virginia; and FRANK N. WATKINS, Commonwealth's Attorney for Prince Edward County, Virginia, Defendants.

COMPLAINT—Filed November 28, 1956

1(a) Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1331. This action arises under Article I, Section 8, and the Fourteenth Amendment of the Constitution of the United States, Section 1, and under the Act of Congress, Revised Statutes, Section 1977, derived from the Act of May 31, 1870, Chapter 14, Section 16, 16 Stat. 144 (Title 42, United States Code, Section 1981), as hereafter more fully appears. The matter in controversy, exclusive of interest and cost, exceeds the sum of three thousand dollars (\$3,000).

(b) Jurisdiction is also invoked under Title 28, United States Code, Section 1332. Plaintiff is a corporation incorporated under the laws of the State of New York. Each defendant is a citizen of the Commonwealth of Virginia. [fol. 3] The matter in controversy, exclusive of interest and cost, exceeds three thousand dollars (\$3,000).

(c) Jurisdiction is further invoked under Title 28, United States Code, Section 1343. This action is authorized by the Act of Congress, Revised Statutes, Section 1979, derived from the Act of April 20, 1871, Chapter 22, Section 1, 17 Stat. 13 (Title 42, United States Code, Section 1983), to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of state law, statute, ordinance, regulation, custom, usage of rights, privileges and immunities secured by Article I, Section 8, and the Fourteenth Amendment of the Constitution of the United States and by the Act of Congress, Revised Statutes, Section 1977, derived from the Act of May 31, 1870, Chapter 14, Section 16, 16 Stat. 144 (Title 42, United States Code, Section 1981), providing for the equal rights of citizens and of all persons within the jurisdiction of the United States as hereafter more fully appears.

(d) Jurisdiction is further invoked under Title 28, United States Code, Section 2281. This is an action for a temporary and a permanent injunction to restrain defendants, officers of the Commonwealth of Virginia, in the enforcement, operation and execution of Chapters 31, 32, 33, 35, 36, Acts of Assembly, Extra Session 1956, of the Commonwealth of Virginia on the grounds that the afore-said statutes deny rights secured by Article I, Section 8, and the Fourteenth Amendment of the Constitution of the United States.

2. This action is a proceeding under Title 28, United States Code, Sections 2201 and 2202, for a judgment declaratory of rights and other legal relationships of the plaintiff, its Virginia State Conference of Branches, its branches, officers, members and employees, and lawyers to [fol. 4] whom said organizations may contribute monies to defray fees and expenses incident to representation of their clients in suits brought by citizens of the United States involving the legality of racial discrimination; and for an injunction implementing the rights declared, to wit:

(a) Whether defendants may enforce against plaintiff, its Virginia State Conference of Branches, its branches,

officers, members, contributors, employees and agents, Chapter 31, Acts of Assembly, Extra Session, 1956, without denying to them due process and equal protection of the laws secured by the Fourteenth Amendment and rights secured by Article I, Section 8, of the United States Constitution, in that Chapter 31 prohibits said organizations and persons from soliciting funds from the public to defray the costs and expenses of litigation involving the constitutionality of racial discrimination, which is part of plaintiff's continuous effort to secure legal equality of all citizens, without plaintiff first complying with the onerous requirements of Chapter 31.

(b) Whether defendants may enforce against plaintiff, its Virginia State Conference of Branches, its branches, its officers, its members, contributors, employees and agents, Chapter 32, Acts of Assembly, Extra Session, 1956, without denying them due process and equal protection of the laws secured by the Fourteenth Amendment and rights secured by Article I, Section 8, of the United States Constitution in that Chapter 32 prohibits said organizations and persons from promoting or opposing legislation concerned with racial discrimination in Virginia, advocating racial integration in compliance with the Constitution and laws of the United States, raising or contributing monies to defray fees and expenses incident to litigation involving the legality of racial discrimination, which is part of plaintiff's continuous effort to secure legal equality of all citizens, without plaintiff first complying with the onerous requirements of Chapter 32.

(c) Whether defendants may enforce against plaintiff, its Virginia State Conference of Branches, its branches, officers, members, employees and attorneys to whom they may contribute monies to defray fees and expenses incident to litigation involving the legality of racial discrimination Chapter 33, Acts of Assembly, Extra Session, 1956, without denying to said organizations and persons rights secured under the equal protection and due process clauses of the Fourteenth Amendment, and Article I, Section 8, of the United States Constitution in that Chapter 33 prohibits said organizations and persons from contributing monies to

defray fees and expenses incident to litigation in which said organizations and persons are not parties by forbidding attorneys to accept such monies without being subject to heavy penalties and burdens including threat of disbarment.

(d) Whether defendants may enforce against plaintiff, its Virginia State Conference of Branches, its branches, officers, members, employees and lawyers to whom they may contribute monies toward defraying fees and expenses incident to litigation involving the legality of racial discrimination, Chapter 35, Acts of the Assembly, Extra Session, 1956, without denying to said organizations and persons equal protection and due process of law secured by the Fourteenth Amendment and Article I, Section 8, of the United States Constitution in that Chapter 35 forbids said organizations and persons from encouraging citizens to secure their rights in the courts, forbids said organizations and persons from so contributing and forbids counsel from appearing in suits toward which said organizations or persons may so contribute without subjecting said organizations, persons or counsel to heavy and unconstitutional penalties.

(e) Whether defendants may enforce against the plaintiff [fol. 6] tiff, its Virginia State Conference of Branches, its branches, officers, members and employees to whom they may contribute monies toward defraying fees and expenses incident to litigation involving the legality of racial discrimination, Chapter 36, Acts of the Assembly, Extra Session, 1956, without denying to said organizations and persons equal protection and due process of law secured by the Fourteenth Amendment and rights secured by Article I, Section 8, of the United States Constitution in that Chapter 36 forbids said organizations and persons from giving financial assistance to persons who are involved in litigation against the Commonwealth of Virginia, its political subdivisions or agents, or from advising or counseling persons to seek redress in the courts against said Commonwealth, its subdivisions or agents or from acting as counsel in such litigation, without subjecting themselves and said lawyers to heavy penalties.

3. Plaintiff is a non-profit New York membership corporation. It was incorporated under the laws of the State of New York in 1911.

Plaintiff's basic aims and purposes are to secure the elimination of all racial barriers which deprive Negro citizens of the privileges and burdens of equal citizenship rights in the United States. In its Articles of Incorporation (attached hereto as plaintiff's Exhibit No. 1 and made a part of this complaint), its principal objectives are described as follows:

... voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law.

To ascertain and publish all facts bearing upon these subjects and to take any lawful action thereon; together with any kind and all things which may lawfully be done by a membership corporation organized under the laws of the State of New York for the further advancement of these objects.

[fol. 7] In accord with its charter and national constitution (attached hereto as plaintiff's Exhibit No. 2 and made a part of the complaint) plaintiff has chartered various branches in Virginia for the purpose of carrying on the work of the organization in Virginia. These branches are independent unincorporated associations subject only to such control by plaintiff-corporation as is set out in the national constitution and constitution for branches (attached hereto as plaintiff's Exhibit No. 3 and made a part of this complaint). In addition to the various branches, there is a state-wide organization of branches known as the Virginia State Conference of Branches maintained by the branches through which they seek to act in concert and pool their strength on issues of state-wide interest.

Plaintiff has registered with the State Corporation Commission and has complied fully with state laws relating to

foreign corporations which were in force prior to the enactments here being contested. By virtue of its activity throughout the 45 years of its existence in its efforts to secure equal rights and equal opportunities for colored citizens in the United States, the plaintiff organization has become regarded as a chief instrument through which colored citizens of the United States and of the State of Virginia may act in their effort to remove the burdens and penalties imposed by restrictions based upon race and color.

4. Defendant, the Attorney General, is the principal legal officer of the Commonwealth of Virginia and is specifically charged with the enforcement of Chapters 31, 32 and 35 Acts of Assembly, Extra Session, 1956 (copies of which are attached hereto as plaintiff's Exhibit No. 4).

5. Defendants, William J. Carleton, Linwood B. Tabb, Jr., T. Gray Haddon, William J. Hassan and Frank N. Watkins are Commonwealth's attorneys for the cities of Newport News, Norfolk and Richmond and the counties of Arlington and Prince Edward, respectively, and each is charged with the enforcement of Chapters 33, 35 and 36, [fol. 8] Acts of the Assembly, Extra Session, 1956 (copies of which are attached hereto as plaintiff's Exhibit No. 4 and made a part of this complaint). Plaintiff, its Virginia State Conference and its branches have contributed and propose to continue to contribute, from funds solicited for the purpose, toward the expense of litigation and counsel fees in cases pending in, or affecting public officials in, places wherein defendants have a legal duty to enforce said laws, and it is essential to the further prosecution of these cases that such solicitations and contributions by the plaintiff, its Virginia State Conference and its branches continue, but to do so in the face of these statutes would subject said organization, its Virginia State Conference, its branches, its members and counsel in said litigation to heavy penalties. With the exception of Chapter 32, all the legislation hereinabove referred to has been declared by the General Assembly as emergency legislation and is presently in full force and effect.

6. As aforesaid, plaintiff, its Virginia State Conference, its branches and members have worked jointly and severally in concert to secure the eradication of enforced racial segregation pursuant to governmental authority and the elimination of all other forms of racial discrimination imposed by law. This effort has been pursued in various ways: (1) by apprising the public of the adverse effects of discrimination; (2) by seeking to secure the passage of federal and local legislation barring racial discrimination in various facets of American life and by seeking these results through executive action wherever possible; (3) by encouraging Negro citizens to assert their constitutional rights and seek redress in the courts wherever necessary; (4) by advocating the removal of all racial barriers to the full participation [fol. 9] in community life of Negro citizens; (5) by contributing to the payment of fees or expenses incident to the prosecution of litigation involving the constitutionality of racially discriminatory governmental action, and (6) by aiding in defraying expenses of such litigation from funds raised by public solicitation.

This has been the manner in which plaintiff, its Virginia State Conference, branches, members and contributors have sought to give aid in the overall struggle in the United States for a society in which considerations of race and color will have no part. No questions were ever raised concerning the legality of plaintiff's activities in Virginia or elsewhere until the Supreme Court decision on May 17, 1954, outlawing segregation in public schools. Since that decision, state officials have been seeking to find ways and means to avoid its implementation, and have concluded that the plaintiff organization must be destroyed if segregation is to be preserved in this state.

Thus, the General Assembly, at its special session which was devoted solely to finding ways and means of preserving segregation in the public schools, enacted Chapters 31-37, inclusive, specifically intended to bar plaintiff, its Virginia State Conference of Branches, its branches or members from assisting others in court tests of the legality of governmental action preserving segregation in the state's public schools. By this legislation, Negro citizens are in effect denied access to the courts in Virginia to seek redress

against state officials for deprivations of their constitutional rights.

[fol. 10] 7. These statutes, Chapters 31-37, inclusive, of the Acts of the Assembly, Extra Session, all enacted on September 29, 1956, are all part of a design to evade compliance with the decision and decree of the United States Supreme Court. In August, 1954, after the decision of the Supreme Court in the School Segregation Cases, the Hon. Thomas B. Stanley, Governor of Virginia, appointed a Commission on Public Education composed of 32 members of the General Assembly (all of whom are white) to study the Supreme Court decision and recommend ways and means for retaining segregated schools. This Commission, known as the Gray Commission, made its initial report on November 11, 1955 (a copy of which is attached hereto as plaintiff's Exhibit No. 5 and made a part of this complaint). In this report the Commission was highly critical of the decision of the Supreme Court of the United States in the School Segregation Cases and stated in part: "This Commission believes that separate facilities in our public schools are in the best interest of both races, educationally and otherwise, and that compulsory integration should be resisted by all proper means in our power." The Commission recommended that a special session of the General Assembly of the Commonwealth of Virginia be called for the purpose of initiating a constitutional convention to amend Section 141 of the Constitution of Virginia to permit the appropriation of public funds for the expenditure and furtherance of elementary, secondary, collegiate and graduate education of Virginia students in non-sectarian and private schools and institutions of learning in addition to those owned or controlled exclusively by the State, and that upon such amendment being adopted, legislation be enacted conferring a broad discretion on local school authorities to make pupil assignments and permit tuition grants from public funds to parents and guardians who might object to having their children attend non-segregated schools.

[fol. 11] On December 3, 1955 the General Assembly met in special session and enacted a bill (a copy of which is attached hereto as plaintiff's Exhibit No. 6 and made a part of this complaint), submitting to the qualified electors of

the state the question as to whether there should be a convention to revise and amend Section 141 of the Constitution of Virginia. On January 9, 1956, the electors of the state voted to have the convention to revise and amend Section 141 of the Constitution of Virginia. On January 19, 1956, the General Assembly in regular session enacted a bill (a copy of which is attached hereto as plaintiff's Exhibit No. 7 and made a part of this complaint), providing for the election of delegates to a special constitutional convention, the issuance of a writ for the same, the convening of such delegates, the organization and function of such convention and appropriating funds for defraying the expenses of same. On February 1, 1956, the General Assembly adopted a resolution (a copy of which is attached hereto as plaintiff's Exhibit No. 8 and made a part of this complaint) characterizing the decision of the United States Supreme Court of May 17, 1954, as a "palpable and dangerous attempt by the court itself to assert the amendatory powers that lie solely within no fewer than three-fourths of the States" and asserted that a question of contested power exists between the decision of the Supreme Court and the resolution; that until the question was settled by clear constitutional amendment "we pledge our firm intention to take all appropriate measures, honorably, legally and constitutionally available to us to resist this illegal encroachment upon our sovereign power."

The constitutional convention was held March 5-7, 1956, and it approved and proclaimed an amendment to Section 141, authorizing use of public funds for tuition grants to [fol. 12] students attending non-sectarian private schools. (A copy of this amendment is attached hereto as plaintiff's Exhibit No. 9 and made a part of this complaint.)

On March 10 the General Assembly met and adopted a resolution (a copy of which is attached hereto as plaintiff's Exhibit No. 10 and made a part of this complaint), declaring that it is the policy of Virginia that no athlete of any public or private school should engage in any athletic contest of any nature within the State of Virginia with another team on which persons of the white and colored race are members, nor should any school schedule permit any member of its student body to engage in any athletic contest within the State of Virginia with a person of the white and

colored race while such student is the member of such student body.

In May, 1956, the Governor requested the Gray Commission to renew its studies in the light of developments since its report in November 1955. The Commission proposed various legislation designed to maintain segregated schools and recommended that a special session of the General Assembly be called to enact these proposals into law. In August, 1956, a special session convened and adopted laws designed to secure segregation in the schools (copies of which are attached hereto as plaintiff's Exhibit No. 11 and made a part of this complaint), despite the ruling of the United States Supreme Court outlawing enforced racial segregation and ordering that steps be taken to eliminate segregation with all deliberate speed.

The Governor, in his special message to the General Assembly, made it clear that he had called the special session to make certain that the state would enact legislation to perpetuate segregated public schools in defiance of the [fol. 13] United States Constitution and the decision of the United States Supreme Court. (A copy of this speech is attached hereto as plaintiff's Exhibit No. 12 and made a part of this complaint.)

At this special session, after having legislated to make school segregation secure, the Assembly adopted Chapters 31-37, inclusive, which are designed to destroy the plaintiff organization and insulate continued governmental enforced school segregation against court attack by United States citizens and residents of the state. The state, by subjecting plaintiff to onerous requirements which it cannot meet and still survive in the state, by barring it from assuming any costs of litigation designed to test the constitutionality of racially discriminatory state action, by placing lawyers who cooperate with plaintiff organization under a cloud, seeks to frustrate and will succeed in frustrating all efforts of citizens of the United States and residents of Virginia to secure state adherence to the constitutional obligations of due process and equal protection of the laws imposed by the Fourteenth Amendment.

8. Plaintiff, its Virginia State Conference and its branches often aid in the cost and expenses of litigation

designed to test the legality and constitutionality of discriminatory governmental action in an effort to remove the barriers and restrictions of race and color which deprive colored citizens of full and equal rights as citizens of the United States. Part of such funds are secured through public solicitation. Under Chapter 31, Acts of the Assembly, Extra Session 1956, such organizations undertaking to solicit any public funds used to underwrite litigation must, among other things, furnish the state with the names and addresses of its officers, directors, members, agents and employees or other persons acting for or in its behalf; [fol. 14] a certified statement showing the source of each and every contributor, membership fee, dues payment or other item of income or other revenue during the preceding calendar year; a certified statement detailing by each transaction the expenditures made during the preceding calendar year and the objectives for which those expenditures were made; and a certified statement showing the location of each officer and branch and the counties and cities in which the organizations proposes to or does finance and maintain litigation in which it is not a party. For failure to file this information within the designated period these organizations, their members, agents and employees are subject to various penalties, including barring plaintiff from the state. Under the terms of Chapter 31, the Attorney General, upon a complaint of a violation of this statute and a finding that the complaint is well founded, is under obligation to institute proceedings for an injunction in the state courts.

There is no doubt but that the activities of plaintiff, its branches, State Conference, officers and members are within the terms of this statute and are subject to prosecution for failure to comply with the terms of the statute. To comply would subject plaintiff, its Virginia State Conference, and its branches to onerous requirements to which other non-profit corporations and associations are not subject, would constitute an unwarranted invasion of its privacy and that of its members and contributors, would constitute an abridgement of the rights of free speech and assembly, would place an undue burden upon plaintiff's right as a foreign corporation to do business in the state; and, in view of the present climate of opinion in the state, would expose its members and contributors to harassment, (sic) abuse

and economic reprisals by those who disagree with plaintiff's aim and would destroy the plaintiff's organization—[fol. 15] all in violation of plaintiff's rights under Article I, Section 8 and under the Fourteenth Amendment to the Constitution of the United States.

9. One of the principal activities of plaintiff, its Virginia State Conference, its branches and members is to promote anti-discriminatory legislation, oppose racially discriminatory legislation and advocate everywhere racial desegregation in compliance with the Supreme Court decisions. In order for these organizations and persons to continue to perform these acts in Virginia, pursuant to Chapter 32, Acts of the Assembly, Extra Session 1956, they must give to the state the names and addresses of principal officers, agents, servants and employees and voluntary workers by or through whom they carry out or intend to carry out their activities; a financial statement showing assets and liabilities and sources of income, itemizing contributions, the nature of gifts and other income and the sources from which received for the calendar year preceding registration. The information required is made a public record subject to inspection by any citizen. Failure to comply is made a misdemeanor and subjects the organizations to a fine not to exceed \$10,000, and failure of the organization to pay the fine subjects its officers, directors and those persons responsible for the management or control of the affairs of the organization personally liable for the payment of such fine. This legislation constitutes a broad and sweeping regulation of freedom of speech and assembly contrary to constitutional restrictions imposed by the Fourteenth Amendment. It places unconstitutional conditions upon exercise of the right of free speech and assembly to these organizations and persons—conditions which in the present climate of Virginia would tend to destroy the right altogether. The statute constitutes a prior restraint on exercise [fol. 16] of the right of free speech and assembly, all in violation of rights secured under the Fourteenth Amendment.

10. Plaintiff, its Virginia State Conference, and its branches and their members, in their effort to secure equal

rights and equal justice for colored citizens seek to persuade and advise Negro citizens to exercise and assert their constitutional rights. And included in the assertion and exercise of constitutional rights is the right to seek redress in the courts. These organizations and persons make contributions to defray the cost of litigation designed to test the legality of racially discriminatory action by state officials whenever the outcome of such litigation will generally benefit the colored citizens of the state and of the United States. In so doing they guarantee at times the payment of expenses and attorneys' fees incident to the litigation in question. Since such litigation is too expensive for any one individual to bear, Chapters 33, 35, 36, Acts of the Assembly, Extra Session 1956, will have the effect of barring all suits by persons seeking to test the constitutionality of racial discriminatory state action and deprive lawyers of the right to assist plaintiff, its branches and members in securing full equality of rights before law for colored citizens of Virginia—all in contravention of rights guaranteed by the equal protection and due process clauses of the Fourteenth Amendment and by Article I, Section 8 of the Constitution.

11. Plaintiff and its members are engaged in a legitimate activity. They merely are seeking to secure full enforcement of constitutional rights of colored citizens to democracy's general benefit. In seeking to secure those rights in concert with other likeminded persons, plaintiff and its members have violated no legitimate interest of the state. [fol. 17] The regulations and penalties imposed by the legislation now under attack would bar the plaintiff corporation from this state, would disbar lawyers who associate themselves with plaintiff and would subject organizations and individuals to severe criminal penalties.

The legislation complained of declares illegal the primary objectives of plaintiff, and bars all debate on questions concerning the legality and soundness of racially discriminatory legislation. Plaintiff of necessity relies upon public support and contributions for its continued existence. Thus, even in the absence of enforcement by state officials, the statutes visit immediate harm upon plaintiff by depriving it of public support, contributions and members, seriously impairing the organization and threatening its destruction.

No plain, adequate or complete remedy exists to redress the threatened injury exists (sic) other than this action for a declaratory judgment or injunction. Any other remedy to which plaintiff and its members could be remitted would be attended by such uncertainties and delays as to deny substantial relief and as to cause further irreparable injury, damages and vexation.

Wherefore plaintiff respectfully prays that, upon filing of this complaint, as may appear proper and convenient to the Court:

1. The Court convene a three-judge District Court, as required by Title 28, United States Code, Sections 2281 and 2284.

2. The Court advance this action on the docket and order a speedy hearing of this action according to law, and upon such hearing,

a. This Court enter a judgment or decree declaring Chapters 31, 32, 33, 35 and 36, Acts of the Assembly, Extra [fol. 18] Session 1956, to be unconstitutional and void in that they deny to plaintiff, its State Conference of Branches, its branches, officers and members and lawyers engaged by it in good faith the equal protection and due process guaranteed by the Fourteenth Amendment of the Constitution and rights secured under Article I, Section 8 of the Constitution.

b. That the Court enter a temporary injunction, restraining and enjoining defendants and each of them, their agents from enforcing or executing the aforesaid statutes against plaintiff, its State Conference of Branches, its branches, its officers and members, and lawyers engaged by it in good faith in that these said statutes deny plaintiff, its State Conference of Branches, its branches, its officers and members, and lawyers engaged by it in good faith the equal protection and due process guaranteed by the Fourteenth Amendment of the Constitution and rights secured under Article I, Section 8 of the Constitution.

c. That the Court enter a permanent injunction, restraining and enjoining defendants and each of them, their agents from enforcing or executing the aforesaid statutes

against plaintiff, its State Conference of Branches, its branches, its officers and members, and lawyers engaged by it in good faith in that these said statutes deny plaintiff, its State Conference of Branches, its branches, its officers and members, and lawyers engaged by it in good faith the equal protection and due process guaranteed by the Fourteenth Amendment of the Constitution and rights secured under Article I, Section 8 of the Constitution.

d. That the Court allow plaintiff its costs herein, and grant such further, other additional or alternative relief as may appear to the Court to be equitable and just in the premises.

/s/ Oliver W. Hill, 118 East Leigh Street, Richmond, Virginia, /s/ Robert L. Carter, 20 West 40th Street, New York 18, New York, Counsel for Plaintiff.

[fol. 19] *Duly sworn to by Roy Wilkins, jurat omitted in printing.*

[fol. 20] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION
Civil Action No. 2435

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, a corporation, Plaintiff,

v.

J. LINDSAY ALMOND, Attorney General for the Commonwealth of Virginia; T. GRAY HADDON, Commonwealth's Attorney for the City of Richmond, Virginia; WILLIAM J. CARLETON, Commonwealth's Attorney for the City of Newport News, Virginia; LINWOOD B. TABB, JR., Commonwealth's Attorney for the City of Norfolk, Virginia; WILLIAM J. HASSAN, Commonwealth's Attorney for Arlington County, Virginia; and FRANK N. WATKINS, Commonwealth's Attorney for Prince Edward County, Virginia, Defendants.

MOTION TO DISMISS—Filed January 31, 1957

The defendants move the Court to dismiss the complaint on the following grounds:

1. (a) The Court lacks jurisdiction under § 1343 of Title 28, U. S. Code because paragraphs (1) and (2) thereof permit only civil actions to recover damages for injury done in furtherance of a conspiracy mentioned in § 1985 of Title 42, and paragraph (3) thereof pertains only to individual plaintiffs, but not to a corporate plaintiff.

[fol. 21] (b) § 1981 of Title 42, U. S. Code, is not a jurisdictional statute and this action is not authorized by the provisions thereof.

(c) This action is not authorized by § 1983 of Title 42, U. S. Code, because natural persons alone are entitled to the rights, privileges and immunities mentioned therein.

2. The plaintiff cannot invoke the jurisdiction of the Court under § 2281 of Title 28, U. S. Code, because the provisions thereof create no new cause of action, but merely prescribe a procedural protection for the defendants.

3. The Court lacks jurisdiction under §§ 2201 and 2202 of Title 28, U. S. Code, because these sections provide only additional remedies for cases of which federal courts already have jurisdiction.

4. The Court lacks jurisdiction because the amount in controversy does not exceed the sum or value of Three Thousand (\$3,000.00) Dollars, exclusive of interest and costs.

5. The complaint does not state a case or controversy within the meaning of either Article III, section 2, of the Constitution of the United States, or § 2201 of Title 28, U. S. Code.

6. The complaint does not state an action of which the Court should take jurisdiction, because there is presented a case in which the plaintiff seeks to restrain the enforcement of criminal statutes of the Commonwealth of Virginia.

[fol. 22] 7. The Court will not exercise its jurisdiction to enjoin the enforcement of state statutes which have not been authoritatively construed by the state courts.

The grounds set forth above are addressed separately to each sub-paragraph of paragraph (2) of the complaint as well as to the complaint as a whole.

/s/ David J. Mays, /s/ Henry T. Wickham, Attorneys for J. Lindsay Almond, Attorney General for the Commonwealth of Virginia; T. Gray Haddon, Commonwealth's Attorney for the City of Richmond, Virginia; William J. Carleton, Commonwealth's Attorney for the City of Newport News, Virginia; Linwood B. Tabb, Jr., Commonwealth's Attorney for the City of Norfolk, Virginia; William J. Hassan, Commonwealth's Attorney for Arlington County, Virginia.

/s/ J. Segar Gravatt, Blackstone, Virginia. Attorney for Frank N. Watkins, Commonwealth's Attorney for Prince Edward County, Virginia.

Tucker, Mays, Moore & Reed, 1407 State-Planters Bank Building, Richmond, Virginia. Of Counsel.
[fol. 23]

POINTS OF AUTHORITY.

1. (a) There are no allegations of a conspiracy set forth in the complaint. Therefore, paragraphs (1) and (2) of § 1343 of Title 28, U. S. Code, are not applicable.

The provisions of paragraph (3) of § 1343 of Title 28, U. S. Code, do not apply to a corporate plaintiff.

Hague v. Committee for Industrial Organization, 307 U. S. 496, 514 (1939).

Grosjean v. American Press Co., 297 U. S. 233, 244 (1936).
Joint Anti-Fascist Refugee Committee v. Clark, 177 F(2d) 79, 83 (1949).

(b) The provisions of § 1981 of Title 42, U. S. Code, merely confer on Negroes a civil status equivalent to that enjoyed by white persons.

Virginia v. Rives, 100 U. S. 313, 317, 318 (1879).

(c) The provisions of § 1983 of Title 42 are not applicable to a corporate plaintiff.

Hague v. Committee for Industrial Organization, *supra*, at p. 514.

Grosjean v. American Press Co., *supra*.

Joint Anti-Fascist Refugee Committee v. Clark, *supra*.

2. The purpose of § 2281 of Title 28, U. S. Code, is to prevent a single judge from improvidently granting injunctions interfering with the operations of state laws.

Mays v. Lakeland Highlands Canning Co., 309 U. S. 310, 318 (1940).

[fol. 24] 3. §§ 2201 and 2202 of Title 28, U. S. Code are procedural and provide additional remedies for use in cases of which federal courts already have jurisdiction.

Donnelly v. Mavar Shrimp & Oyster Co., 190 F(2d) 409, 410 (5th Cir., 1951).

Must v. Wilkinson, 127 F.Supp. 905, 906 (S.D. D.C., Calif. 1955).

4. The complaint is bare of any facts to justify the conclusion that this action involves the necessary jurisdictional amount, and substantial proof of such amount on the part of the plaintiff is required to vest jurisdiction in this court.

Hague v. Committee for Industrial Organization, *supra* at pp. 507-508.

McNutt v. General Motors Acceptance Corporation, 298 U. S. 178, 180 (1936).

Johnson v. Levitt & Sons, 131 F.Supp. 114, 117, (E.D. Penn. 1955).

McGuire v. Amrein, 101 F.Supp. 414, 418 (D.Md., 1951). See, generally, 30 ALR (2d) 602.

5. The plaintiff has failed to show that a justiciable case or controversy exists.

International L. & W. Union v. Boyd, 347 U. S. 222, 223-224 (1954).

Public Service Commission of Utah v. Wycoff Company, 344 U. S. 237, 240-241 (1952).

Aircraft and Diesel Equipment Corporation v. Hirsch, 62 F.Supp. 520, 524 (D.C. D.C., 1945), affirmed 331 U. S. 752, 777 (1947).

Alabama State Federation of Labor v. McAdory, 325 U. S. 450, 462 (1945).

[fol. 25] *Coffman v. Breeze Corporations, Inc.*, 323 U. S. 316, 324-325 (1945).

Watson v. Buck, 313 U. S. 387, 400 (1941).

Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U. S. 270, 273 (1941).

Ashwander v. Tennessee Valley Authority, 297 U. S. 288, 325 (1936).

Virginia Conference of the N.A.A.C.P. v. Richmond, Civil No. 1358, E.D. Va., 1951, (Opinion by Bryan, District Judge).

6. In the absence of danger of great, immediate (sic) and irreparable injury, a court of equity will not interfere with a state in the execution of her criminal statutes.

Stefanelli v. Minard, 342 U. S. 117 (1951).

Douglas v. Jeannette, 319 U. S. 157, 162 (1943).

Watson v. Buck, *supra*.

Beal v. Missouri Pacific R. Corporation, 312 U. S. 45, 49, (1941).

Spielman Motor Sales Company v. Doge, 295 U. S. 89, 95 (1935).

Galfas v. City of Atlanta, 193 F(2d) 931, 935 (5th Cir. 1952).

Ackerman v. International Longshoremen's & W. Union, 187 F(2d) 860, 865 (9th Cir.) cert. den., 342 U. S. 859 (1951).

Virginia Conference of the N.A.A.C.P. v. Richmond, *supra*.

7. The Court will not exercise its discretion to restrain the enforcement of state statutes which have not yet been construed by the state courts.

Alabama Public Service Commission v. Southern R. Co., 341 U. S. 341, 349-350 (1951).

Shipman v. DuPre, 339 U. S. 321, 322 (1950).

American Federation of Labor v. Watson, 327 U. S. 582, 595, (1946).

[fol. 26] *Spector Motor Service v. McLaughlin*, 323 U. S. 101, 105 (1944).

Watson v. Buck, *supra*, at p. 401.

Railroad Commission v. Pullman Company, 312 U. S. 496, 500 (1941).

Galfas v. City of Atlanta, *supra*, at p. 934.

Virginia Conference of the N.A.A.C.P. v. Richmond, *supra*.

Respectfully submitted,

/s/ David J. Mays, /s/ Henry T. Wickham, /s/ J. Segar Gravatt, Counsel for the Defendants.

[fol. 27] NOTICE OF MOTION TO DISMISS (omitted in printing).

[fol. 28] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 29] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

Civil Action No. 2435

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, a corporation, Plaintiff,

v.

J. LINDSAY ALMOND, JR., ETC., ET AL., Defendants.

ANSWER—Filed April 30, 1957

In answer to the complaint heretofore filed in this action, defendants say:

1. Defendants rely upon their motion to dismiss heretofore filed in this action and reassert all grounds set forth in the said motion in defense hereof.

Defendants more particularly deny the allegations contained in paragraphs 1(a) and (b) of the complaint insofar as it is asserted that the matter in controversy, exclusive

of interest and cost, exceeds the sum of \$3,000.00, and affirmatively state that the jurisdictional amount is not present.

Defendants more particularly deny the allegations contained in paragraph 1(c) of the complaint and affirmatively state that the plaintiff cannot invoke the jurisdiction of this Court under Section 1343 of Title 28 U.S.C.A. in that the said section is not applicable to corporate plaintiffs. Furthermore, the defendants state that Sections 1979 and 1983 of Title 42 do not authorize this action.

[fol. 30] Defendants more particularly deny the allegations contained in paragraph 1(d) of the complaint and affirmatively state that the jurisdiction of this Court cannot be invoked under Section 2281 of Title 28 U.S.C.A. in that the said section merely prescribes a procedural protection for the defendants.

2. Defendants deny that the plaintiff may invoke the declaratory judgment powers of this Court, as alleged in paragraph 2 of the complaint, for determination of rights of any person, natural, fictitious or artificial, not a party to this suit and especially of persons referred to as "its Virginia State Conference of Branches, its branches, officers, members and employees, and lawyers."

Defendants admit the lawful enactment of Chapters 31, 32, 33, 35 and 36 of the Acts of the General Assembly of Virginia, Extra Session, 1956. Defendants deny that the said Acts or any of them are unconstitutional as alleged in paragraph 2 of the complaint.

3. Defendants are not advised as to the truth of the allegations of paragraph 3 of the complaint and call for strict proof of all such allegations.

4. Defendants admit that J. Lindsay Almond, Jr. is Attorney General of Virginia; that William J. Carleton, Linwood B. Tabb, Jr., T. Gray Haddon, William J. Hassan and Frank N. Watkins are the Commonwealth's Attorneys, respectively, for the cities of Newport News, Norfolk, Richmond and the counties of Arlington and Prince Edward. The responsibilities and duties of these officers being fixed by law is neither admitted nor denied with respect to the several enactments challenged in this proceeding and legal proof and determination thereof is hereby required.

5. Defendants are not advised as to the truth of the allegations of the first paragraph of paragraph 6 of the complaint and call for strict proof of all such allegations.

[fol. 31] 6. The allegations of the second and last paragraphs of paragraph 6 of the complaint and paragraph 7 thereof are extraneous, irrelevant and immaterial to the proper consideration and decision of the question of the constitutionality of the enactments challenged in the complaint and should, therefore, be stricken therefrom. Insofar as the court may determine any of the said allegations to be relevant or material, defendants call for strict proof thereof. Defendants expressly deny any unlawful, unconstitutional or improper purpose by the General Assembly of Virginia, the Governor of Virginia, or any of the other agencies or bodies therein mentioned and state that all actions taken by the said Commonwealth, its Governor or legislative bodies have been taken in the lawful exercise of powers peculiarly vested in it for the protection of the educational system of the Commonwealth and all of its people.

7. Defendants are not advised as to the truth of the allegations of paragraphs 8, 9 and 10 of the complaint and call for strict proof of all such allegations.

8. Defendants deny the allegations contained in paragraph 11 of the complaint and call for strict proof of all such allegations.

9. Defendants expressly deny the factual and legal conclusions of the prayer of the complaint and call for strict proof thereof. Defendants allege that the said Acts are constitutional in all respects.

10. Defendants deny all of the allegations in the complaint which are not specifically admitted in this answer and deny that the plaintiff is entitled to the relief sought in the complaint.

[fol. 32] Wherefore, defendants, by counsel, pray that this action be dismissed and the Court allow defendants their costs herein expended.

/s/ David J. Mays, /s/ Henry T. Wickham, Attorneys for J. Lindsay Almond, Jr., Attorney General for the Commonwealth of Virginia; T. Gray Haddon, Commonwealth's Attorney for the City of Richmond, Va.; William J. Carleton, Commonwealth's Attorney for the City of Newport News, Va.; Linwood B. Tabb, Jr., Commonwealth's Attorney for the City of Norfolk, Va.; William J. Hassan, Commonwealth's Attorney for Arlington County, Va.

/s/ J. Segar Gravatt, Blackstone, Virginia. Attorney for Frank N. Watkins, Commonwealth's Attorney for Prince Edward County, Virginia.

Tucker, Mays, Moore & Reed, 1407 State-Planters Bank Bldg., Richmond, Virginia. Of Counsel.

[fol. 33] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 34] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

CA 2436

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND,
INCORPORATED, a corporation, Plaintiff,

v.

J. LINDSAY ALMOND, JR., Attorney General for the Commonwealth of Virginia; T. GRAY HADDON, Commonwealth's Attorney for the City of Richmond, Virginia; WILLIAM J. CARLETON, Commonwealth's Attorney for the City of Newport News, Virginia; LINWOOD B. TABB, JR., Commonwealth's Attorney for the City of Norfolk, Virginia; WILLIAM J. HASSAN, Commonwealth's Attorney for Arlington County, Virginia; and FRANK N. WATKINS, Commonwealth's Attorney for Prince Edward County, Virginia, Defendants.

COMPLAINT—Filed November 28, 1956

1(a) Jurisdiction of this Court is invoked under Title 28, United States Code, Section 1331. This action arises under Article I, Section 8, and the Fourteenth Amendment of the Constitution of the United States, Section 1, and under the Act of Congress, Revised Statutes, Section 1977, derived from the Act of May 31, 1870, Chapter 14, Section 16, 16 Stat. 144 (Title 42, United States Code, Section 1981), as hereafter more fully appears. The matter in controversy, exclusive of interest and cost, exceeds the sum of three thousand dollars (\$3,000).

(b) Jurisdiction is also invoked under Title 28, United States Code, Section 1332. Plaintiff is a corporation incorporated under the laws of the State of New York. Each defendant is a citizen of the Commonwealth of Virginia. [fol. 35] The matter in controversy, exclusive of interest and cost, exceeds the sum of three thousand dollars (\$3,000).

(c) Jurisdiction is further invoked under Title 28, United States Code, Section 1343. This action is authorized by the Act of Congress, Revised Statutes, Section 1979, derived from the Act of April 20, 1871, Chapter 22, Section 1, 17 Stat. 13 (Title 42, United States Code, Section 1983), to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of state law, statute, ordinance, regulation, custom, usage of rights, privileges and immunities secured by Article I, Section 8, and the Fourteenth Amendment, of the Constitution of the United States and by the Act of Congress, Revised Statutes, Section 1977, derived from the Act of May 31, 1870, Chapter 14, Section 16, 16 Stat. 144 (Title 42, United States Code, Section 1981), providing for the equal rights of citizens and of all persons within the jurisdiction of the United States as hereafter more fully appears.

(d) Jurisdiction is further invoked under Title 28, United States Code, Section 2281. This is an action for a temporary and a permanent injunction to restrain defendants, officers of the Commonwealth of Virginia, in the enforcement, operation and execution of Chapters 31, 32, 33, 35,

36, Acts of Assembly, Extra Session 1956, of the Commonwealth of Virginia on the grounds that the aforesaid statutes deny rights secured by Article I, Section 8, and the Fourteenth Amendment, of the Constitution of the United States.

2. This action is a proceeding under Title 28, United States Code, Sections 2201 and 2202, for a judgment declaratory of rights and other legal relationships of the plaintiff, its contributors, and lawyers to whom said organization may contribute monies to assist in payment of fees and expenses incident to suits brought by citizens of the United States involving the legality of enforced racial [fol. 36] discrimination, and for an injunction implementing the rights declared, to wit:

(a) Whether defendants may enforce against plaintiff, Chapter 31, Acts of Assembly, Extra Session, 1956, (a copy of which is contained in Plaintiff's Exhibit No. 1, attached hereto, and made a part of this complaint) without denying to it due process and equal protection of the laws secured by the Fourteenth Amendment and rights secured by Article I, Section 8, of the United States Constitution, in that Chapter 31 prohibits it from soliciting funds from the public to assist parties in the payment of costs and expenses of litigation involving the constitutionality of racial discrimination, which is part of its continuous effort to secure legal equality of all citizens, without plaintiff first complying with the onerous requirements of Chapter 31.

(b) Whether defendants may enforce against plaintiff, Chapter 32, Acts of Assembly, Extra Session, 1956, (a copy of which is contained in Plaintiff's Exhibit No. 1, attached hereto, and made a part of this complaint), without denying it due process and equal protection of the laws secured by the Fourteenth Amendment and rights secured by Article I, Section 8, of the United States Constitution, in that Chapter 32 prohibits it advocating racial desegregation in compliance with the Constitution and laws of the United States, or raising or contributing monies to assist in the payment of fees and expenses incident to litigation in-

volving the legality of racial discrimination, which is part of plaintiff's continuous effort to secure impartial legal equality of all citizens regardless of color without plaintiff first complying with the onerous requirements of Chapter 32.

(c) Whether defendants may enforce against plaintiff, and attorneys to whom it may contribute monies to assist [fol. 37] in the payment of fees and expenses incident to litigation involving the legality of racial discrimination, Chapter 33, Acts of Assembly, Extra Session, 1956, (a copy of which is contained in Plaintiff's Exhibit No. 1, attached hereto, and made a part of this complaint), without denying to said organization and persons rights secured by the equal protection and due process clauses of the Fourteenth Amendment, and Article I, Section 8, of the United States Constitution in that Chapter 33 prohibits plaintiff from contributing monies to assist in the payment of fees and expenses incident to litigation in which it is not a party by forbidding such attorneys from accepting such monies without being subject to heavy penalties and burdens including threat of disbarment.

(d) Whether defendants may enforce against plaintiff, its contributors, and lawyers to whom they may contribute monies toward fees and expenses incident to litigation involving the legality of racial discrimination, Chapter 35, Acts of the Assembly, Extra Session, 1956, (a copy of which is contained in Plaintiff's Exhibit No. 1, attached hereto, and made a part of this complaint), without denying to said organizations and persons equal protection and due process of law secured by the Fourteenth Amendment and Article I, Section 8, of the United States Constitution, in that Chapter 35 forbids said organizations and persons from encouraging citizens to seek redress of their rights in the courts, forbids said organizations and persons from so contributing, and forbids attorneys from appearing in suits toward which said organizations or persons may so contribute, without subjecting said organizations, persons or counsel to heavy and unconstitutional penalties.

(e) Whether defendants may enforce against plaintiff, its contributors, and attorneys to whom they may contribute

[fol. 38] monies toward fees and expenses incident to litigation involving the legality of racial discrimination, Chapter 36, Acts of the Assembly, Extra Session, 1956, (a copy of which is contained in Plaintiff's Exhibit No. 1, attached hereto, and made a part of this complaint), without denying to said organizations and persons equal protection and due process of law secured by the Fourteenth Amendment and rights secured by Article I, Section 8, of the United States Constitution, in that Chapter 36 forbids said organizations and persons from giving financial assistance to persons who are involved in litigation against the Commonwealth of Virginia, its political subdivisions or agents, or from advising or counseling persons to seek redress in the courts against said Commonwealth, its subdivisions or agents, or from acting as counsel in such litigation, without subjecting themselves and said lawyers to heavy penalties.

(f) Whether defendants may enforce against plaintiff Chapters 31, 32, 33, 35, 36, Acts of Assembly, Extra Session, 1956, without denying to it due process and equal protection of the laws secured by the Fourteenth Amendment in that said Acts are aimed solely at actions seeking to require conformity to the Constitution of the United States as interpreted by the United States Supreme Court, specifically the question of the invalidity of segregated public schools; in that said acts are limited solely to actions in connection with efforts to secure the ending of segregated public schools in Virginia and against corporations, organizations, individuals and contributors to organizations engaged in seeking the elimination of racial segregation in public schools and for no other purpose; thereby being an unreasonable classification, discriminatory on its face and in violation of rights guaranteed by the Fourteenth Amendment.

3. Plaintiff is a non-profit membership corporation. It was incorporated under the laws of the State of New York [fol. 39] in 1940. Its basic aims and purposes are to secure the elimination of all racial barriers which deprive Negro citizens of the privileges and burdens of equal citizenship rights in the United States. In its Articles of Incorporation (attached hereto as plaintiff's Exhibit No. 2 and made a

part of this complaint), its principal objectives are described as follows:

- (a) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof, who are suffering legal injustices by reason of race or color and unable to employ and engage legal aid and assistance on account of poverty.
- (b) To seek and promote the educational facilities for Negroes who are denied the same by reason of race or color.
- (c) To conduct research, collect, collate, acquire, compile and publish facts, information and statistics concerning educational facilities and educational opportunities for Negroes and the inequality in the educational facilities and education opportunities provided for Negroes out of public funds; and the status of the Negro in American life.

Plaintiff has fully complied with all requirements prerequisite to admission to function as a foreign corporation in Virginia. By virtue of its efforts to secure equal rights and equal opportunities for colored citizens in the United States, the plaintiff organization has become regarded as an instrument through which colored citizens of the United States and of the State of Virginia may act in their effort to remove the unconstitutional burdens and penalties imposed by restrictions based upon race and color.

4. Defendant, J. Lindsay Almond, Jr., is Attorney General, and, as such, is the principal legal officer, of the Commonwealth of Virginia and is specifically charged with the enforcement of Chapters 31, 32, and 35 Acts of Assembly, Extra Session, 1956.

5. Defendants, William J. Carleton, Linwood B. Tabb, Jr., T. Gray Haddon, William J. Hassan and Frank N. Watkins are Commonwealth's attorneys for the Cities of [fol. 40] Newport News, Norfolk and Richmond and the Counties of Arlington and Prince Edward, respectively,

and each is charged with the enforcement of Chapters 33, 35 and 36, Acts of the Assembly, Extra Session, 1956. Plaintiff has contributed and proposes to continue to contribute, from funds solicited for the purpose, toward the expenses of litigation and counsel fees in cases pending in, or affecting public officials in, places wherein defendants have a legal duty to enforce said statutes, and it is essential to the further prosecution of these cases that such solicitations and contributions by plaintiff continue, but to do so in the face of said statutes would subject plaintiff, and counsel involved in said litigation, to heavy penalties. With the exception of Chapter 32, all the legislation hereinabove referred to has been declared by the General Assembly as emergency legislation and is presently in full force and effect.

6. Plaintiff, its members and contributors have worked in concert to secure the eradication of enforced racial segregation pursuant to governmental authority and the elimination of all other forms of unconstitutional racial discrimination. Plaintiff has sought the uniform application of the Fourteenth Amendment to all sections of the United States and all of its efforts have been toward securing compliance with the Constitution of the United States. This program has been pursued in various ways: (1) by conducting research and collecting, collating, compiling and publishing facts, information and statistics concerning the extent of racial segregation and discrimination, the lack of scientific basis for such discrimination, and the examples of the benefits of desegregation to our Government, state and federal, as well as to the world; (2) by compiling available scientific data relating to the question of racial or minority discrimination within the United States; (3) by legal research of lawyers, law school professors and [fol. 41] others in the field of constitutional law with particular reference to rights of individuals and the publication of these studies; (4) to render upon request, financial assistance to Negroes who are seeking redress in the courts for the denial to them of the equal protection of the laws due process as guaranteed by the Fourteenth Amendment by means of state laws or practices which require racial

segregation in the use of public facilities such as schools and other institutions; this being due only when the party to the litigation is financially unable to finance the case.

The General Assembly of Virginia at its Special Session which adopted the statutes herein involved was devoted solely to efforts to preserve segregation in public schools and said statutes were adopted for the sole purpose of preventing plaintiff, its lawyers and its contributors from assisting in litigation involving the legality of the statewide pattern of racial segregation in public schools being maintained by the Commonwealth of Virginia in open defiance of decisions of the Supreme Court of the United States. By the legislation here complained of, Negro citizens of Virginia are in effect denied access to the courts of Virginia to seek redress against continued deprivation of their constitutional rights.

7. The Acts here complained of are part of a studied plan of the Commonwealth of Virginia to preserve racial segregation in public schools and other public facilities. From May 17, 1954 to date the executive and legislative officials of the Commonwealth of Virginia have concentrated upon devising ways and means of preventing the enforcement of the decision of the Supreme Court in the School Segregation Cases including the following:

(a) On or about November 11, 1955, the Virginia Commission on Public Education, a 32-member all-white legislative commission appointed by the Governor of Virginia [fol. 42] to examine the effect of the aforesaid decisions and to make such recommendations as it deemed proper, submitted to the Governor of Virginia its report, a copy of which is attached hereto as Exhibit A. In this report the Commission was highly critical of the decision of May 17, 1954, of the Supreme Court of the United States in this action and its companion cases and stated:

"This Commission believes that separate facilities in our public schools are in the best interest of both races, educationally and otherwise, and that compulsory integration should be resisted by all proper means in our power.

Among other things, the Commission recommended that a special session of the General Assembly of Virginia be called for the purpose of initiating a constitutional convention to amend Section 141 of the Constitution of Virginia to permit the appropriation of public funds for expenditure in furtherance of elementary, secondary, collegiate and graduate education of Virginia students in nonsectarian public and private schools and institutions of learning in addition to those owned or exclusively controlled by the state or some political subdivision thereof, and that, upon such amendment being adopted, legislation be enacted conferring a broad discretion on local school authorities to make pupil assignments, and permitting tuition grants from public funds to parents and guardians who might object to having their children attend nonsegregated schools.

(b) On December 3, 1955, the General Assembly of Virginia, in special session, enacted a bill submitting to the qualified electors of Virginia the question whether there should be a convention to revise and amend Section 141 of the Constitution of Virginia.

(c) On January 9, 1956, the electors of Virginia voted to have a convention to revise and amend Section 141 of the Constitution of Virginia.

[fol. 43] (d) On January 19, 1956, the General Assembly of Virginia, in regular session, enacted a bill providing for the election of delegates to such constitutional convention, the issuance of a writ for the same, the convening of such delegates, the organization and functioning of such convention, and appropriating funds to defray the expenses of the same.

(e) On February 1, 1956, the General Assembly of Virginia, in regular session, adopted a resolution characterizing said decisions of May 17, 1954, "a deliberate, palpable, and dangerous attempt by the court itself to usurp the amendatory power that lies solely with not fewer than three-fourths of the States," and asserting that a "question of contested power" exists between the aforesaid decision and this resolution, and appealing to other states of the

United States to join Virginia "in taking appropriate steps, pursuant to Article V of the Constitution, by which an amendment, designed to settle the issue of contested power here asserted, may be proposed to all the States," and declaring "that until the question here asserted by the State of Virginia be settled by clear constitutional amendment, we pledge our firm intention to take all appropriate measures honorably, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers,..."

(f) On March 7, 1956, in the aforesaid constitutional convention ordained a revision and amendment of Section 141 of the Constitution of Virginia permitting the appropriation of public funds for expenditure in furtherance of elementary, secondary, collegiate and graduate education of Virginia students public and nonsectarian private schools and institutions of learning in addition to those owned or exclusively controlled by the State or some political subdivision thereof.

(g) On March 10, 1956, the General Assembly of Virginia, in regular session, adopted a resolution declaring [fol. 44] that "it is the public policy of Virginia that no athletic team of any public free school should engage in any athletic contest of any nature within the State of Virginia with another team on which persons of the white and colored race are members, nor should any such school schedule or permit any member of its student body to engage in any athletic contest within the State of Virginia with a person of the white and colored race while such student is a member of such student body."

8. At the 1956 Extra Session of the General Assembly of Virginia, the Governor of Virginia submitted a legislative scheme as "recommendations to continue our system of segregated public schools," predicated upon "conclusion of the vast majority of our citizens that there should be no mixing of the races in the public schools, anywhere in Virginia," that the public school system "can be preserved and operated as an efficient state-wide system only by segregation of the races," and that "integration of the

racess would make impossible the operation of an efficient system." At this session the General Assembly adopted a comprehensive legislative plan having the singular purpose of avoiding any and all compliance with the Supreme Court's decisions in the School Segregation Cases. Important features of the plan are the provisions of Chapter 71, Items 133, 134, 137, 138 and 143 which prohibit the expenditure of funds from the state treasury for the maintenance of any nonsegregated public school, the provisions of Chapters 68 and 69 for the automatic closing of desegregated schools and their subsequent operation, if at all, by the Governor on behalf of the General Assembly, the provisions of Chapters 56, 57 and 58 for the expenditure of state and local funds in grants for the education of children in nonsectarian private schools, the provisions of Chapter 70 for the assignment and placement of children in public schools, the provisions of Chapter 59 that "[Not- [fol. 45] withstanding any other provision of law, no child shall be required to enroll in or attend any other school wherein both white and colored children are enrolled," and various sundry provisions in aid of these features. By this legislation the public officials and General Assembly of Virginia have sought to continue racial segregation in the public schools of the Commonwealth, and by Chapters 31, 32, 33, 35 and 36, which are the subject of this action, to destroy every effective means whereby citizens might challenge the practice.

9. Plaintiff and its contributors often assist in payment of the cost and expenses of judicial proceedings on behalf of Negroes of Virginia to remove the unlawful barriers and restrictions of race and color which deprive colored citizens of full and equal rights as citizens of the United States. Part of such funds are secured through public solicitation. Under Chapter 31, Acts of the Assembly, Extra Session 1956, an organization undertaking to solicit any public funds used to assist in defraying the costs of such litigation must, among other things, furnish the state with the names and addresses of its officers, directors, members, agents and employees or other persons acting for or in its behalf; a certified statement showing the source of each and every

contributor, membership fee, dues payment or other item of income or other revenue during the preceding calendar year; a certified statement detailing by each transaction the expenditures made during the preceding calendar year and the objectives for which those expenditures were made; and a certified statement showing the location of each officer and branch and the counties and cities in which the organizations proposes to or does finance and maintain litigation in which it is not a party. For failure to file this information within the designated period these organizations, their members, agents and employees are subject to various penalties, including barring plaintiff from the state. Under the terms of Chapter 31, the Attorney General, [fol. 46] upon a complaint of a violation of the Constitution and a finding that the complaint is well founded, is under obligation to institute proceedings for an injunction in the state courts.

There is no doubt but that the activities of plaintiff, contributors and members are within the terms of this statute and are subject to prosecution for failure to comply with the terms of the statute. To comply would subject plaintiff to onerous requirements to which other non-profit corporations and associations are not subject, would constitute an unwarranted invasion of its privacy and that of its members and contributors, would constitute an abridgement of the rights of free speech and assembly, would place an undue burden upon plaintiff's right as a foreign corporation to do business in the state; and, in view of the present climate of opinion in the state, would expose its members and contributors to harassment, (sic) abuse and economic reprisals by those who disagree with plaintiff's aim and would destroy plaintiff corporation.

10. The activity of the plaintiff in assisting in the payment of costs and expenses of litigation to protect Negroes from continued denial of rights guaranteed by the Fourteenth Amendment is likewise covered by Chapter 32, Acts of the Assembly, Extra Session, 1956. Said Act is an unreasonable classification, is based upon race and color, places onerous burdens upon plaintiff and is therefore in violation of the Fourteenth Amendment.

Plaintiff also advocates compliance with the Constitution of the United States including the ending of governmental racial segregation. In order for plaintiff to continue this activity it is required to give to the state names and addresses of principal officers, agents, servants and employees and voluntary workers, itemized financial statements including names of contributors. Failure to comply [fol. 47] is made a misdemeanor. This legislation is a broad and sweeping regulation and restriction of freedom of speech and assembly contrary to Amendments 1 and 14 of the Constitution of the United States. Said Act not only places an onerous burden upon plaintiff but in the present climate of public opinion in Virginia public exposure of names of contributors would seriously handicap legitimate operations of plaintiff.

11. Plaintiff, in seeking to aid Negroes in securing equality before the law and complete equality as American citizens, has found that officials of the Commonwealth of Virginia are determined to continue the unlawful practice of racial segregation unless and until they are restrained from doing so by the federal courts; that such litigation is much to (sic) costly for any individual Negro litigant to finance; and, that other citizens are willing and anxious to aid such litigants in the interest of justice for all Americans including themselves. Chapters 33, 35 and 36, Acts of the General Assembly, Extra Session 1956, will have the effect of preventing all assistance to persons seeking redress in the Courts from continued denial of constitutional rights by unconstitutional statutes and practices aimed at perpetuating racial segregation in open defiance of the Constitution of the United States and the mandates of the Supreme Court. Said Acts are unreasonable classifications, put unreasonable burdens upon plaintiff and those it seeks to assist, and are in violation of the equal protection and due process clauses of the Fourteenth Amendment.

12. Plaintiff's activities conducted in Virginia are by means of the United States mail, interstate telegraph and telephone, between New York and Virginia. Chapters 31, 32, 33, 35 and 36 of General Assembly of Virginia, Extra

Session, 1956, are efforts to curtail the rights of plaintiff protected and guaranteed by Article I, Section 8 of the Constitution of the United States against such infringement.

[fol. 48] 13. All of the acts herein complained of are aimed at plaintiff and corporations similar to plaintiff. These acts are limited in scope to actions involving racial segregation and are therefore unreasonable classifications.

14. Plaintiff and those associated with it are engaged in a legitimate activity. They merely are seeking to aid in securing full enforcement of constitutional rights of colored citizens to democracy's general benefit. In helping to secure those rights in concert with other likeminded persons, plaintiff has violated no legitimate interest of the state.

The regulations and penalties imposed by the legislation now under attack would bar the plaintiff corporation from this state, would disbar lawyers who associate themselves with plaintiff and would subject organizations and individuals to severe criminal penalties.

The legislation complained of declares illegal the primary objectives of plaintiff, and bars all debate on questions concerning the legality and soundness of racially discriminatory legislation. Plaintiff of necessity relies upon public support and contributions for its continued existence. Thus, even in the absence of enforcement by state officials, the statutes visit immediate harm upon plaintiff and those it assists by depriving it of public support, contributions and members, seriously impairing the organization and threatening its destruction.

No plain, adequate or complete remedy exists to redress the threatened injury exists (sic) other than this action for a declaratory judgment or injunction. Any other remedy to which plaintiff and its members could be remitted would be attended by such uncertainties and delays as to deny substantial relief and as to cause further irreparable injury, damages and vexation.

Wherefore plaintiff respectfully prays that, upon filing of this complaint, as may appear proper and convenient to the Court:

1. The Court convene a three-judge District Court, as required by Title 28, United States Code, Sections 2281 and 2284.

[fol. 49] 2. The Court advance this action on the docket and order a speedy hearing of this action according to law, and upon such hearing,

a. This Court enter a judgment or decree declaring Chapters 31, 32, 33, 35 and 36, Acts of the General Assembly of Virginia, Extra Session 1956, to be unconstitutional and void in that said statutes deny to plaintiff, its members, and lawyers engaged by it in good faith the equal protection and due process guaranteed by the Fourteenth Amendment and rights secured by Article I, Section 8, and the First and Fourteenth Amendments to the Constitution of the United States.

b. That the Court enter a temporary injunction restraining and enjoining defendants, and each of them, their successors in office and their agents, from enforcing or executing Chapters 31, 32, 33, 35 and 36, Acts of the General Assembly of Virginia, Extra Session, 1956, against plaintiff, its members, agents, contributors or lawyers on grounds that said statutes are unconstitutional and in violation of Article I, Section 8 and Amendments One and Fourteen of the Constitution of the United States.

c. That the Court enter a permanent injunction restraining and enjoining defendants, and each of them, their successors in office and their agents, from enforcing or executing Chapters 31, 32, 33, 35 and 36, Acts of the General Assembly of Virginia, Extra Session, 1956, against plaintiff, its members, agents, contributors or lawyers on grounds that said statutes are unconstitutional and in violation of Article I, Section 8 and Amendments One and Fourteen of the Constitution of the United States.

/s/ Spottswood W. Robinson, III, 623 North Third Street, Richmond, Virginia.

/s/ Thurgood Marshall, 107 West 43rd Street, New York 36, New York.

[fol. 50] *Duly sworn to by Thurgood Marshall, jurat omitted in printing.*

[fol. 51] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION
Civil Action No. 2436

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND,
INC., a corporation, Plaintiff,

v.

J. LINDSAY ALMOND, JR., Attorney General for the Commonwealth of Virginia; T. GRAY HADDON, Commonwealth's Attorney for the City of Richmond, Virginia; WILLIAM J. CARLETON, Commonwealth's Attorney for the City of Newport News, Virginia; LINWOOD B. TABB, JR., Commonwealth's Attorney for the City of Norfolk, Virginia; WILLIAM J. HASSAN, Commonwealth's Attorney for Arlington County, Virginia; and FRANK N. WATKINS, Commonwealth's Attorney for Prince Edward County, Virginia, Defendants.

MOTION TO DISMISS—Filed January 31, 1957

The defendants move the Court to dismiss the complaint on the following grounds:

1. (a) The Court lacks jurisdiction under § 1343 of Title 28, U. S. Code because paragraphs (1) and (2) thereof permit only civil actions to recover damages for injury done in furtherance of a conspiracy mentioned in § 1985 of Title 42, and paragraph (3) thereof pertains only to individual plaintiffs, but not to a corporate plaintiff.

[fol. 52] (b) § 1981 of Title 42, U. S. Code, is not a jurisdictional statute and this action is not authorized by the provisions thereof.

(c) This action is not authorized by § 1983 of Title 42, U. S. Code, because natural persons alone are entitled to the rights, privileges and immunities mentioned therein.

2. The plaintiff cannot invoke the jurisdiction of the Court under § 2281 of Title 28, U. S. Code, because the provisions thereof create no new cause of action, but merely prescribe a procedural protection for the defendants.

3. The Court lacks jurisdiction under §§ 2201 and 2202 of Title 28, U. S. Code, because these sections provide only additional remedies for cases of which federal courts already have jurisdiction.

4. The Court lacks jurisdiction because the amount in controversy does not exceed the sum or value of Three Thousand (\$3,000.00) Dollars, exclusive of interest and costs.

5. The complaint does not state a case or controversy within the meaning of either Article III, section 2, of the Constitution of the United States, or § 2201 of Title 28, U. S. Code.

6. The complaint does not state an action of which the Court should take jurisdiction, because there is presented a case in which the plaintiff seeks to restrain the enforcement of criminal statutes of the Commonwealth of Virginia.

[fol. 53] 7. The Court will not exercise its jurisdiction to enjoin the enforcement of state statutes which have not been authoritatively construed by the state courts.

The grounds set forth above are addressed separately to each sub-paragraph of paragraph (2) of the complaint as well as to the complaint as a whole.

/s/ David J. Mays, /s/ Henry T. Wickham, Attorneys
for J. Lindsay Almond, Jr., Attorney General for the Commonwealth of Virginia; T. Gray Haddon, Commonwealth's Attorney for the City of Richmond, Va.; William J. Carleton, Commonwealth's Attorney for the City of Newport News, Va.; Lin-

wood B. Tabb, Jr., Commonwealth's Attorney for the City of Norfolk, Va.; William J. Hassan, Commonwealth's Attorney for Arlington County, Va.

/s/ J. Segar Gravatt, Blackstone, Virginia, Attorney for Frank N. Watkins, Commonwealth's Attorney for Prince Edward County, Virginia.

Tucker, Mays, Moore & Reed, 1407 State-Planters Bank Building, Richmond, Virginia, Of Counsel.

[fol. 54] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION
Civil Action No. 2436

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND,
Inc., a corporation, Plaintiff,

v.

J. LINDSAY ALMOND, JR., ETC., ET AL., Defendants.

ANSWER—Filed April 30, 1957

In answer to the complaint heretofore filed in this action, defendants say:

1. Defendants rely upon their motion to dismiss heretofore filed in this action and reassert all grounds set forth in the said motion in defense hereof.

Defendants more particularly deny the allegations contained in paragraphs 1(a) and (b) of the complaint insofar as it is asserted that the matter in controversy, exclusive of interest and cost, exceeds the sum of \$3,000.00, and affirmatively state that the jurisdictional amount is not present.

Defendants more particularly deny the allegations contained in paragraph 1(c) of the complaint and affirmatively

state that the plaintiff cannot invoke the jurisdiction of this Court under Section 1343 of Title 28 U.S.C.A. in that the said section is not applicable to corporate plaintiffs. Furthermore, the defendants state that Sections 1979 and 1983 of Title 42 do not authorize this action.

[fol. 55] Defendants more particularly deny the allegations contained in paragraph 1(d) of the complaint and affirmatively state that the jurisdiction of this Court cannot be invoked under Section 2281 of Title 28 U.S.C.A. in that the said section merely prescribes a procedural protection for the defendants.

2. Defendants deny that the plaintiff may invoke declaratory judgment (sic) powers of this Court, as alleged in paragraph 2 of the complaint, for determination of rights of any person, natural, fictitious or artificial, not a party to this suit and especially of persons referred to as "its contributors and lawyers".

Defendants admit the lawful enactment of Chapters 31, 32, 33, 35 and 36 of the Acts of the General Assembly of Virginia, Extra Session, 1956. Defendants deny that the said Acts or any of them are unconstitutional as alleged in paragraph 2 of the complaint.

3. Defendants are not advised as to the truth of the allegations of paragraph 3 of the complaint and call for strict proof of all such allegations.

4. Defendants admit that J. Lindsay Almond, Jr. is Attorney General of Virginia; that William J. Carleton, Linwood B. Tabb, Jr., T. Gray Haddon, William J. Hassan and Frank N. Watkins are the Commonwealth's Attorneys, respectively, for the cities of Newport News, Norfolk, Richmond and the counties of Arlington and Prince Edward. The responsibilities and duties of these officers being fixed by law is neither admitted nor denied with respect to the several enactments challenged in this proceeding and legal proof and determination thereof is hereby required.

5. Defendants are not advised as to the truth of the allegations of the first paragraph of paragraph 6 of the complaint and call for strict proof of all such allegations.

[fol. 56] 6. The allegations of the last paragraph of paragraph 6 of the complaint and paragraphs 7 and 8 thereof are extraneous, irrelevant and immaterial to the proper consideration and decision of the question of the constitutionality of the enactments challenged in the complaint and should, therefore, be stricken therefrom. Insofar as the court may determine any of the said allegations to be relevant or material, defendants call for strict proof thereof. Defendants expressly deny any unlawful, unconstitutional or improper purpose by the General Assembly of Virginia, the Governor of Virginia, or any of the other agencies or bodies therein mentioned and state that all actions taken by the Commonwealth, its Governor or legislative bodies have been taken in the lawful exercise of powers peculiarly vested in it for the protection of the educational system of the Commonwealth and all of its people.

7. Defendants are not advised as to the truth of the allegations of paragraphs 9 and 10 of the complaint and call for strict proof of all such allegations.

8. Defendants deny the allegations contained in paragraph 11 of the complaint and call for strict proof of all such allegations.

9. Defendants are not advised as to the truth of the allegations of paragraphs 12, 13 and 14 of the complaint and call for strict proof of all such allegations.

10. Defendants expressly deny the factual and legal conclusions of the prayer of the complaint and call for strict proof thereof. Defendants allege that the said Acts are constitutional in all respects.

11. Defendants deny all of the allegations in the complaint which are not specifically admitted in this answer and deny that the plaintiff is entitled to the relief sought in the complaint.

[fol. 57] Wherefore, defendants, by counsel, pray that this action be dismissed and the Court allow defendants their costs herein expended.

/s/ David J. Mays, /s/ Henry T. Wickham, Attorneys for J. Lindsay Almond, Jr., Attorney General for the Commonwealth of Virginia; T. Gray Haddon, Commonwealth's Attorney for the City of Richmond, Va.; William J. Carleton, Commonwealth's Attorney for the City of Newport News, Va.; Linwood B. Tabb, Jr., Commonwealth's Attorney for the City of Norfolk, Va.; William J. Hassan, Commonwealth's Attorney for Arlington County, Va.

/s/ J. Segar Gravatt, Blackstone, Virginia, Attorney for Frank N. Watkins, Commonwealth's Attorney for Prince Edward County, Virginia.

Tucker, Mays, Moore & Reed, 1407 State-Planters Bank Bldg., Richmond, Virginia, Of Counsel.

[fol. 58] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 59] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

Civil Actions Nos. 2435 and 2436

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, a corporation,

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND,
INCORPORATED, a corporation, Plaintiffs,

KENNETH C. PATTY, Attorney General for the Commonwealth of Virginia; T. GRAY HADDON, Commonwealth's Attorney for the City of Richmond, Virginia; WILLIAM J. CARLETON, Commonwealth's Attorney for the City of Newport News, Virginia; LINWOOD B. TABB, JR., Commonwealth's Attorney for the City of Norfolk, Virginia; WILLIAM J. HASSAN, Commonwealth's Attorney for Arlington County, Virginia; and FRANK N. WATKINS, Commonwealth's Attorney for Prince Edward County, Virginia, Defendants.

Before Soper, Circuit Judge, and Hutcheson and Hoffman, District Judges.

Hutcheson, District Judge concurring in part and dissenting.

[fol. 60] Messrs. Robert L. Carter, New York, New York, and Oliver W. Hill, Richmond, Virginia, counsel for National Association For the Advancement of Colored People, in Civil Action No. 2435.

Messrs. Thurgood Marshall, New York, New York, and Spottswood W. Robinson, III, counsel for N.A.A.C.P. Legal Defense and Educational Fund, Incorporated, in Civil Action No. 2436.

Messrs. David J. Mays, Henry T. Wickham, John W. Edmonds and Clarence F. Hicks, Assistant Attorney General, all of Richmond, Virginia, counsel for defendants in both actions, and J. Segar Gravatt, Blackstone, Virginia, counsel for Frank N. Watkins, Commonwealth's Attorney for Prince Edward County.

[fol. 61] OPINION—Filed January 21, 1958

Soper, Circuit Judge:

These companion suits were brought by the National Association for the Advancement of Colored People and the N.A.A.C.P. Legal Defense and Educational Fund, Inc., corporations of the State of New York, against the Attorney General of the Commonwealth of Virginia and the Commonwealth Attorneys for the City of Richmond, the City of Newport News, the City of Norfolk, Arlington County and Prince Edward County, Virginia, to secure a declaratory judgment and an injunction restraining and enjoining the defendants from enforcing or executing Chapters 31, 32, 33, 35 and 36¹ of the Acts of Assembly of the Commonwealth, all of which were passed at the Extra Session convened between August 27, 1956, and September 29, 1956, and were approved by the Governor of the Commonwealth on September 29, 1956.

¹ These Acts have been respectively codified in the Code of Virginia at §§18-349.9 et seq., 18-349.17 et seq., 54-74, 78, 79; 18-349.25 et seq., and 18-349.31 et seq.

The suits are based on the allegation that the statutes are unconstitutional and void, in that they deny to the plaintiffs rights accorded to them by the Fourteenth Amendment to the Constitution of the United States.

Jurisdiction is invoked under the civil rights statutes, 42 U.S.C. §§1981 and 1983 and 28 U.S.C. §1343, under which the district courts have jurisdiction of actions brought to redress the deprivation under color of state law of any right, privilege or immunity secured by the Constitution or statutes of the United States providing for equal rights of all persons within the jurisdiction of the United States. Jurisdiction is also invoked under 28 U.S.C. §§1331 and 1332 [fol. 62] wherein jurisdiction is conferred upon the federal courts in all civil actions where the matter in controversy exceeds the sum of \$3,000.00 exclusive of interest and costs and arises under the Constitution and law of the United States or between citizens of different states. Accordingly, the present three-judge district court was set up under 28 U.S.C. §2281 and evidence was taken upon which the following findings of facts are based.

The National Association for the Advancement of Colored People is a non-profit membership organization which was established in 1909 and incorporated under the laws of the State of New York in 1911. It is licensed to do business as a foreign corporation in the State of Virginia. The purposes of the corporation are set out in the statement of its charter:

"That the principal objects for which the corporation is formed are voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interests of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law.

"To ascertain and publish all facts bearing upon these subjects and to take any lawful action thereon; together with any and all things which may lawfully be done by a membership corporation organized under

the laws of the State of New York for the further advancement of these objects."

The activities of the Association cover forty-four states, the District of Columbia and the Territory of Alaska. It is the most important Negro rights organization in the country (see 6 Western Res. L. Rev. 101, 102; 58 Yale L.J. 574, 581), having approximately 1,000 unincorporated branches. A branch consists of a group of persons in a local community who enroll the minimum number of members and upon formal application to the main body are granted a charter. In Virginia, there are eighty-nine active branches. A person becomes a member of a branch upon payment of dues which amount, at a minimum, to \$2.00 per year and may be more at the option of the member, up to the sum of \$500.00 for life membership. The regular [fol. 63] dues of \$2.00 per year are divided into two parts, one-half being sent to the national office in New York and one-half retained by the local branch.

In a number of states, including Virginia, the branches are voluntarily grouped into an unincorporated State Conference, the expenses of which are paid jointly by the national organization and the local branches, each contributing 10-cents out of its share of each member's dues. In Virginia, the branches contribute a greater sum for the support of their State Conference.

The principal source of income of the Association and its branches in the several states consists of the membership fees which are solicited in local membership drives. Other income is derived from special fund raising campaigns and individual contributions. In the first eight months of the year the greater number of annual membership drives are conducted. During that period in 1957 the Association enrolled 13,595 members in Virginia. This represents a sharp reversal of the rising trend in membership figures in the same eight-month period in the preceding three years, which showed 13,583 members in 1954, 16,130 in 1955 and 19,436 in 1956. The income of the Association from its Virginia branches during the first eight months of 1957 was \$37,470.60 as compared with \$43,612.75 for the same period in 1956. The total amount received by the

Association from Virginia was \$38,469.59 in the first eight months of 1957 as compared with \$44,138.71 for the same period in 1956. The total income of the Association from the country as a whole for the year 1956 was \$598,612.84 and \$425,608.13 for the first eight months of 1957.

At the top of the organizational structure of the national body is the annual convention, which consists of delegates representing the 1,000 branches in the several states. It has the power to establish policies and programs for the [fol. 64] ensuing year which are binding upon the Board of Directors and upon the branches of the Association. Each year the convention chooses sixteen members of a Board of forty-eight Directors, each of whom serves for a term of three years. The Board of Directors meets eleven times a year to carry out the policies laid down by the convention. Under the Board an administrative staff is set up, headed by an executive secretary who, representing the Board, presides over the functioning of the local branches and State Conferences throughout the country under the authority of the constitution and by-laws of the national body.

The Virginia State Conference takes the lead of the Association's activities in the state under the administration of a full time salaried executive secretary, by whom the activities of the branches in the state are co-ordinated and local membership and fund raising campaigns are supervised. The State Conference also holds annual conventions attended by delegates from the branches, who elect officers and members of the Board of Directors of the Conference. Through its representatives the State Conference appears before the General Assembly of Virginia and State Commissions in support of or in opposition to measures which in its view advance or retard the status of the Negro in Virginia. It encourages Negroes to comply with the statutes of the state so as to qualify themselves to vote, and it conducts educational programs to acquaint the people of the state with the facts regarding racial segregation and discrimination, and to inform Negroes as to their legal rights and to encourage the assertion of those rights when they are denied. In carrying out this program, the public is informed of the policies and objectives of the Association

through public meetings, speeches, press releases, newsletters and other media.

One of the most important activities of the State Conference, perhaps its most important activity, is the contribution it makes to the prosecution of law suits brought by Negroes to secure their constitutional rights. It has been found, through years of experience, that litigation is the most effective means to this end when Negroes are subjected to racial discrimination either by private persons or by public authority. Accordingly, the Virginia State Conference maintains a legal committee or legal staff composed of thirteen colored lawyers located in seven communities scattered over the greater part of the state. The members of the legal staff are elected at the annual convention of the State Conference and they in turn elect a chairman. Ordinarily the legal staff is called into action upon a complaint made to one or more members of the staff by aggrieved parties, but sometimes a grievance is brought directly to the attention of the Executive Secretary of the Conference, and if in his judgment the case presents a genuine grievance involving discrimination on account of race or color, which falls within the scope of the work of the Association, he refers the parties to the Chairman of the legal staff. If the Chairman approves the complaint, he recommends favorable action to the President of the State Conference and if he concurs, the Conference obligates itself to defray in whole or in part the costs and expenses of the litigation. With rare exceptions the attorneys selected by the complainant to bring the suit have been members of the legal staff. When a law suit has been completed the attorney is compensated by the Conference for out-of-pocket expenditures, including travel and stenographic services, and is also paid per diem compensation for the time spent in his professional capacity. No money ever passes directly to the plaintiff or litigant. The attorneys appear in the course of the litigation for and on behalf of the individual litigants, who in every instance authorize the institution of the suit.

In brief, the Association, in various forms, publicizes its policies against discrimination and informs the public [fol. 66] that it will offer aid for the prosecution of a legitimate complaint involving improper discrimination.

Thus it is generally known that the State Conference will furnish money for litigation if the proper need arises, but the Association does not take the initiative and does not act until some individual comes to it asking for help.

Sometimes a complainant seeks damages for violation of his rights, as in cases involving the treatment accorded Negroes in public conveyances. In such a case, the Association ordinarily does not furnish aid if the complainant is financially able to prosecute his claim. In the most fruitful field of litigation in respect to public education, the rights of large numbers of colored people in the community are involved and a class suit is brought; and the Association pays the expenses even if one or more of the complainants is possessed of financial resources. In most of these cases the expenses of the suit are so great that it could not be prosecuted without outside aid. The fees paid the lawyers are modest in size and less than they would ordinarily earn for the time consumed.

The N.A.A.C.P. Legal Defense and Educational Fund, Inc., the plaintiff in the second suit, also takes a prominent part in support of litigation on behalf of Negro citizens. It is a membership corporation which was incorporated under the law of the State of New York in 1940. Like the Association, the Fund is registered with the Virginia Corporation Commission as a foreign corporation doing business in the state. It was formed, as its name implies, to assist Negroes to secure their constitutional rights by the prosecution of law suits of the sort that have just been described. The charter declares that its purposes are to render legal aid gratuitously to Negroes suffering "legal injustice" by reason of race or color who are unable on account of poverty to employ and engage legal aid on their own behalf. Other purposes are to secure educational facilities for Negroes who are denied the same by reason of [fol. 67] their race and color and to conduct research and to compile and publish information on this subject and generally on the status of the Negro in American life. The charter forbids the corporation to attempt to influence legislation by propaganda or otherwise and requires it to operate without pecuniary benefit to its members. The charter was approved by a New York court after service

upon and without objection from the local bar association so that it obtained the right under the law of New York to operate as a legal aid society.

The Fund is governed by a Board of Directors which, under its charter, consists of not less than five and not more than fifty members. Its work is directed by the usual executive officers. It operates from an office in New York City and has no subordinate units. It employs a full-time staff of six resident attorneys and three research attorneys stationed in New York City, and it keeps four lawyers on annual retainers in Richmond, Dallas, Los Angeles and Washington. It also engages local attorneys for investigation and research in particular cases. It has on call one hundred lawyers throughout the country and a large number of social scientists who operate on a voluntary basis and work without pay or upon the payment of expenses only. By virtue of its efforts to secure equal rights and opportunities for colored citizens in the United States, the Fund has become regarded as an instrument through which colored citizens of the United States may act in their efforts to combat unconstitutional restrictions based upon race and color.

In order to give information as to the nature of the work of the Fund, members of the legal staff engage in public speaking and lectures in colleges and universities throughout the country on a variety of subjects connected with the legal rights of colored citizens and the race problem in general. But in conformity with the charter of the Fund, the officers and employees of the corporation do not attempt to influence legislation, by propaganda or otherwise.

[fol. 68] It is apparent that so far as litigation is concerned the purposes of the Association and of the Fund are identical, and they in fact co-operate in this activity. They are, however, separate corporate bodies with separate offices. At one time some of the executive officers were in the employ of both corporations but at the present no person serves as an officer or employee, although many a person serves as an officer or employee, although many as a separate organization because it was thought that it should have no part in attempting to influence legislation

and the complete separation has been promoted by rulings of the Treasury Department, which disallow tax deductions for contributions to organizations engaged in political activity. Deductions for contributions to the Fund are allowed.

The revenues of the Fund are derived solely from contributions received in response to letters sent out four times a year throughout the country by the Committee of One Hundred and, to some extent, from solicitations at small luncheons or dinners. There are no membership dues. The Committee of One Hundred was organized in 1941 by Dr. Neilsen, former president of Smith College, and consists predominantly of educators and lawyers who have joined together for the purpose of raising the money necessary to keep the organization going. Most of the money comes in the form of \$5.00 and \$10.00 contributions. Substantial sums are received from charitable foundations, of which the largest was \$15,000 and the aggregate was \$50,000 in 1956. For the four or five years prior to 1957 the income showed a steady increase. The income for 1956 was \$351,283.32. For the first eight months of 1955, 1956 and 1957 the income was \$152,000.00, \$246,000.00 and \$180,000.00, respectively. The receipts from Virginia were \$1,469.50 in 1954; \$6,256.19 in 1955, a portion of which was a refund from prior litigation; \$1,859.20 in 1956, and \$424.00 for the first eight months in 1957.

[fol. 69] The total disbursements of the Fund for the year 1956 were \$268,279.03. The total expenses for Virginia during the past four years consisted principally of the sum of \$6,000.00, which was the annual retainer of the regional counsel.

The Fund supplements the work of the legal staff of the Virginia State Conference by contributing the services of the regional counsel and, more particularly, by furnishing results of the research of scientists, lawyers and law professors in various parts of the country. The Fund also contributes the very large expenditures which are needed for the prosecution of important cases that go from the federal courts in Virginia and other states to the Supreme Court of the United States in which the fundamental rules governing racial problems are laid down. In this class of case the expenses amount to a sum between \$50,000 and

\$100,000, and in the celebrated case of *Brown v. Board of Education*, the expenses amounted to a sum in excess of \$200,000. The expenses of cases tried in the lower courts, including an appeal to the Court of Appeals for the Circuit, amount to approximately \$5,000.00.

The Fund has made only a superficial investigation into the financial competency of complainants to whom it has rendered aid in Virginia. For the most part the cases have been class actions brought for the benefit of all the colored citizens in a community with children in the local public schools and the regional counsel of the Fund has entered the cases at the request of members of the legal staff of the State Conference. It has been obvious in such instances that the burden of the litigation was too great for the individual litigants to bear, and the lawyers for the Fund have not regarded their participation as a violation of the charter provision authorizing the Fund to aid [fol. 70] indigent litigants even if it was shown that some of the complainants in a case had legal title to homes of substantial value.²

STATUTES IN SUIT

The five statutes against which the pending suits are directed, that is Chapters 31, 32, 33, 35 and 36 of the Acts of the General Assembly of Virginia, passed at its Extra Session in 1956, were enacted for the express purpose of impeding the integration of the races in the public schools of the state which the plaintiff corporations are seeking to promote. The cardinal provisions of these statutes are set forth generally in the following summary.

Chapters 31 and 32 are registration statutes. They require the registration with the State Corporation Commission of Virginia of any person or corporation who engages in the solicitation of funds to be used in the prosecution

² Testimony as to the activities of the Association and of the Fund was given in large part by Roy Wilkins, executive secretary of the Association; Thurgood Marshall, director counsel of the Fund; W. Lester Banks, executive secretary of the Virginia State Conference; Oliver W. Hill, chairman of the legal staff of the Virginia State Conference; Spotswood W. Robinson III, southeast regional counsel for the Fund.

of suits in which it has no pecuniary right or liability, or in suits on behalf of any race or color, or who engages as one of its principal activities in promoting or opposing the passage of legislation by the General Assembly on behalf of any race or color, or in the advocacy of racial integration or segregation, or whose activities tend to cause racial conflicts or violence. Penalties for failure to register in violation of the statutes are provided.

Chapters 33, 35 and 36 relate to the procedure for suspension and revocation of licenses of attorneys at law, to the crime of barratry and to the inducement and instigation of legal proceedings. It is made unlawful for any person or corporation: to act as an agent for another who employs a lawyer in a proceeding in which the principal [fol. 71] is not a party and has no pecuniary right or liability; or to accept employment as an attorney from any person known to have violated this provision; or to instigate the institution of a law suit by paying all or part of the expenses of litigation, unless the instigator has a personal interest or pecuniary right or liability therein; or to give or receive anything of value as an inducement for the prosecution of a suit, in any state or federal court or before any board or administrative agency within the state, against the Commonwealth, its departments, subdivisions, officers and employees; or to advise, counsel, or otherwise instigate the prosecution of such a suit against the Commonwealth, etc., unless the instigator has some interest in the subject or is related to or in a position of trust toward the plaintiff. Penalties for the violation of these statutes are provided.

The legislative history of these statutes to which we now refer conclusively shows that they were passed to nullify as far as possible the effect of the decision of the Supreme Court in *Brown v. Board of Education*, 347 U.S. 483 and 349 U.S. 294.

LEGISLATIVE HISTORY OF STATUTES IN SUIT

On May 17, 1954, the Supreme Court in *Brown v. Board of Education*, 347 U.S. 483, after argument and reargument, denounced the segregation of the races in public education as a violation of the equal protection clause of the Four-

teenth Amendment, and requested the parties as well as the attorneys general of the affected states to file briefs and present further argument to assist the court in formulating its decrees.³

On May 31, 1955, the Supreme Court, after further argument, reaffirmed its position, reversed the judgments below [fol. 72] and remanded the cases to the lower courts to take such proceedings as should be necessary and proper to admit the parties to the public school on a racially non-discriminatory basis with all deliberate speed.

Amongst the cases in the group considered by the Supreme Court was *Davis v. County School Board of Prince Edward County, Virginia*, which was instituted on May 23, 1951, on behalf of colored children of high school age in that county. The case had been tried by a three-judge district court after the Commonwealth of Virginia had been permitted to intervene. The court upheld the validity of the constitutional and statutory enactments of the state which required the segregation of the races in the state schools, but found that the buildings, curricula and transportation furnished the colored children were inferior to those furnished the white children and ordered the defendants to remedy the defects with diligence and dispatch. 103 F.Supp. 337. As we have seen, this decision was reversed by the Supreme Court on the constitutional point and the duty to eliminate segregation was directly presented to the State authorities.⁴ Their reaction is depicted in the following recital.

On August 30, 1954, the Governor of Virginia appointed the Gray Commission on Public Education, composed of

³ On the same day, in *Bolling v. Sharpe*, 347 U.S. 497, the Court held that segregation in the public schools in the District of Columbia is a denial of the due process clause of the Fifth Amendment.

⁴ On remand, after the filing of numerous motions and the rendering of arguments thereon, the Court entered a decree enjoining racial discrimination in school admission but refused to set a time limit within which the Board should begin compliance, observing the likelihood of the schools being closed under state law. 149 F.Supp. 431. This refusal was reversed on appeal, *Allen v. County School Board of Prince Edward County, Va.*, 4 Cir., — F.2d —.

thirty-two members of the General Assembly, and directed it to study the effect of the segregation decisions and make such recommendations as might be deemed proper. The Commission submitted its final report to the Governor on November 11, 1955. Referring to prior decisions of the Supreme Court and to the non-judicial authority cited by [fol. 73] it in support of the segregation decision, the Commission characterized the latter in the following terms:

"With this decision, based upon such authority, we are now faced. It is a matter of the gravest import, not only to those communities where problems of race are serious, but to every community in the land, because *this decision transcends the matter of segregation in education*. It means that irrespective of precedent, long acquiesced in, the Court can and will change its interpretation of the Constitution at its pleasure, disregarding the orderly processes for its amendment set forth in Article V thereof. It means that the most fundamental of the rights of the states and of their citizens exist by the Court's sufferance and that the law of the land is whatever the Court may determine it to be by the process of judicial legislation."

The Commission's general conclusion was that "separate facilities in our public schools are in the best interest of both races, educationally and otherwise, and that compulsory integration should be resisted by all proper means in our power". To this end the Commission recommended that a special session of the General Assembly be called to authorize the holding of a constitutional convention in order to amend §141 of the Constitution of Virginia which shortly before had been held by the Supreme Court of Appeals of Virginia in *Almond v. Day*, 197 Va. 419, to prohibit the payment of tuition and other expenses of students who may not desire to attend public schools. The Commission also recommended that legislation be passed conferring broad discretion upon the school authorities to assign pupils in the public schools and to provide for the expenditure of State funds in the payment of tuition grants so as to prevent enforced integration. In response to this recommendation, the General Assembly, on December 3,

1955, meeting in Extra Session, enacted a bill submitting to the voters of the state the question whether such a convention should be held, and on January 9, 1956, the holding of the convention was approved by the voters.

On February 1, 1956, the General Assembly in its regular session adopted an "interposition resolution" by votes of 36-to-2 in the Senate and 90-to-5 in the House of Delegates. [fol. 74] In this resolution the following declarations were included:

"That by its decision of May 17, 1954, in the school cases, the Supreme Court of the United States placed upon the Constitution an interpretation, having the effect of an amendment thereto, which interpretation Virginia emphatically disapproves; * * *

"That with the Supreme Court's decision aforesaid and this resolution by the General Assembly of Virginia, a question of contested power has arisen: The court asserts, for its part, that the States did, in fact, in 1868, prohibit unto themselves, by means of the Fourteenth Amendment, the power to maintain racially separate public schools, which power certain of the States have exercised daily for more than 80 years; the State of Virginia, for her part, asserts that she has never surrendered such power;

"That this declaration upon the part of the Supreme Court of the United States constitutes a deliberate, palpable, and dangerous attempt of the court itself to usurp the amendatory power that lies solely with not fewer than three-fourths of the States; * * *

"(That Virginia) * * * anxiously concerned at this massive expansion of central authority, * * * is in duty bound to interpose against these most serious consequences, and earnestly to challenge the usurped authority that would inflict them upon her citizens. * * *

"And be it finally resolved, that until the question here asserted by the State of Virginia be settled by clear Constitutional amendment, we pledge our firm intention to take all appropriate measures honorably, legally and constitutionally available to us, to resist

this illegal encroachment upon our sovereign powers, and to urge upon our sister States, whose authority over their own most cherished powers may next be imperiled, their prompt and deliberate efforts to check this and further encroachment by the Supreme Court, through judicial legislation, upon the reserved powers of the States."

The constitutional convention authorized by the voters was held on March 7, 1956, and amended §141 of the constitution of the state in accordance with the recommendation of the Gray Commission.

On August 27, 1956, the General Assembly was convened in Extra Session in response to the call of the Governor of the State. He made an opening address to the assembled lawmakers,⁵ in the course of which he said:

[fol. 75] "The people of Virginia, and their elected representatives, are confronted with the gravest problems since 1865. Beginning with the decision of the Supreme Court of the United States on May 17, 1954, there has been a series of events striking at the very fundamentals of constitutional government and creating situations of the utmost concern to all our people in this Commonwealth, and throughout the South.

"Because of the events I have just mentioned, I come before you today for the purpose of submitting recommendations to continue our system of segregated public schools * * * "

"The principal bill which I submit to you at this time defines State policy and governs public school appropriations accordingly. The declaration reads, in part, as follows:

"The General Assembly declares, finds and establishes as a fact that the mixing of white and colored children in any elementary or secondary public school

⁵ Sec. 73 of the Virginia Constitution provides: "The Governor shall . . . recommend to (the General Assembly's) consideration such measures as he may deem expedient, and convene the General Assembly . . . when, in his opinion, the interest of the State may require."

within any county, city or town of the Commonwealth constitutes a clear and present danger * * * and that no efficient system of elementary and secondary public schools can be maintained in any county, city or town in which white and colored are taught in any such school located therein.'

"The bill then defines efficient systems of elementary and secondary public schools as those systems within a county, city or town in which there is no student body, in the respective categories, in which white and colored children are taught. Following these definitions is this further declaration:

'The General Assembly for the purpose of protecting the health and welfare of the people and in order to preserve and maintain an efficient system of public elementary and secondary schools hereby declares and establishes it to be the policy of this Commonwealth that no public elementary or secondary schools in which white and colored children are mixed and taught shall be entitled to or shall receive any funds from the State Treasury for their operation, and, to that end, forbids and prohibits the expenditure of any part of the funds appropriated * * * for the establishment and maintenance of any system of the public elementary or secondary schools, which is not efficient.'

"This policy is in harmony with §129 of the State Constitution, which provides that 'The General Assembly shall establish and maintain an efficient system of public free schools throughout the state.' Manifestly, integration of the races would make impossible the operation of an efficient system. By this proposed legislation, the General Assembly, properly exercising its authority under the Constitution, will clearly define what constitute an efficient system for which State appropriations are made."

The purpose for which the Extra Session was called was emphasized in the following exhortation with which the Governor concluded his address:

[fol. 76] "The proposed legislation recognizes the fact that this is the time for a decisive and clear answer to these questions:

"(1) Do we accept the attempt of the Supreme Court of the United States, without constitutional or any other legal basis, to usurp the rights of the States and dictate the administration of their internal affairs? (2) Do we accept integration? (3) Do we want to permit the destruction of our schools by permitting 'a little integration' and witness its subsequent sure and certain insidious spread throughout the Commonwealth? My answer is a positive 'No'. On the other hand, shall we take all appropriate measures honorably, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers? My answer is a definite 'Yes' and I believe it is to be the answer of the vast majority of the white people of Virginia, as well as the answer of a large, if unknown, number of Negro citizens."

The Legislature responded at once to the Governor's appeal. The principal bill to which he referred in his address became Chapter 71 of the Acts passed at the Extra Session. It appropriated funds for the maintenance of the elementary and secondary schools of the state for the ensuing biennium and included the declarations above set out, whereby the use of the funds for integrated schools are prohibited. An accompanying Act, Chapter 70, known as the Pupil Placement Act, requires each pupil to attend his present segregated school unless a transfer is authorized by a Pupil Placement Board appointed by the Governor; and the Board is required to consider the effect of its decisions upon the efficiency of the schools which, according to the declarations of the Legislature, can be maintained only by preserving segregation of the races. A review of the decisions of the Board is provided through a cumbersome and costly procedure. Another companion statute, Chapter 68, provides that if children of both races are enrolled in the same school by any school authorities acting voluntarily or under the compulsion of an order of court, the school shall be closed and removed from the

public school system and the control of the school shall be vested in the state and not reopened until the Governor finds that it can be done without enforced integration.

[fol. 77] The Pupil Placement Act was considered at length and held unconstitutional by this court in *Adkins v. School Board of the City of Newport News*, 148 F.Supp. 430, wherein the terms of the Act are set out in full and the legislative history is reviewed. The opinion of the court pointed out that the administrative remedy afforded to an aggrieved person by the Act would consume at least 105 days between the filing of the protest and the final decision which was lodged in the hands of the Governor. On appeal the judgment of the District Court was affirmed, 246 F.2d 325, cert. den. — U.S. —.

EFFECT OF PASSAGE OF STATUTES IN SUIT

It was in this setting⁶ that the Acts now before the court were passed as parts of the general plan of massive resistance to the integration of schools of the state under the Supreme Court's decrees. The agitation involved in the widespread discussion of the subject and the passage of the statutes by the Legislature have had a marked effect upon

⁶ While it is well settled that a court may not inquire into the legislative motive (*Tenney v. Brandhove*, 341 U.S. 367, 377), it is equally well settled that a court may inquire into the legislative purpose. (See *Baskin v. Brown*, 4 Cir., 174 F.2d 391, 392-393, and *Davis v. Schnell*, 81 F.Supp. 872, 878-880, aff'd 336 U.S. 933, in which state efforts to disenfranchise Negroes were struck down as violative of the Fifteenth Amendment.) Legislative motive—good or bad—is irrelevant to the process of judicial review; but legislative purpose is of primary importance in determining the propriety of legislative action, since the purpose itself must be within the legislative competence, and the methods used must be reasonably likely to accomplish that purpose. Because of this necessity, a study of legislative purpose is of the highest relevance when a claim of unconstitutionality is put forward. Usually a court looks into the legislative history to clear up some statutory ambiguity, as in *Davis v. Schnell*, 81 F.Supp. at 878; but such ambiguity is not the *sine qua non* for a judicial inquiry into legislative history. See the decision in *Lane v. Wilson*, 307 U.S. 268, in which the Supreme Court showed that the state statute before the court was merely an attempt to avoid a previous decision in which the "grandfather" clause of an earlier statute had been held void.

the public mind which has been reflected in hostility to the activities of the plaintiffs in these cases. This has been shown not only by the falling off of revenues, indicated above, but also by manifestations of ill will toward white [fol. 78] and colored citizens who are known to be sympathetic with the aspirations of the colored people for equal treatment, particularly in the field of public education. A number of white citizens who attempted to give aid to the movement by speaking out on behalf of the colored people, or by taking membership in the Association, or joining the complainants in school suits, have been subjected to various kinds of annoyance. When their names appeared in the public press in connection with these activities they were besieged day and night by telephone calls which were obscene, threatening, abusive, or merely silent interruptions to the peace and comfort of their homes. Letters and telegrams of like nature were also received. Some of these persons found themselves cut by their friends and made unwelcome where they had formerly been received with kindness and respect. Two crosses were burned near the homes of two of them; an effigy was hung in the yard of a white plaintiff in a school case, and a hearse was sent to the home of the colored president of the Norfolk branch of the Association during his absence "to pick up his body." The last mentioned person was also chairman of the local branch of a labor union and a man of prominence in his community. He had been active and successful in directing membership campaigns for the Association in prior years but in 1957 he found that the solicitors were unwilling to continue their work. Colored lawyers on the State Conference legal staff were assailed with fear that enforcement of the statutes now before this court would result in loss of their licenses to practice should they continue their activities on the Association's behalf. Numerous newspaper articles offered in evidence show that the proposal to integrate the schools was a prime subject of public interest and discussion throughout the state. They are received over objections by the defendants only as evidence of this fact and not to prove the accuracy of the statements therein contained. In view of all the evidence, we find that [fol. 79] the activities of the State authorities in support

of the general plan to obstruct the integration of the races in schools in Virginia, of which plan the statutes in suit form an important part, brought about a loss of members and a reduction of the revenues of the Association and made it more difficult to accomplish its legitimate aims.

The defendants on their own behalf produced as witnesses six of the plaintiffs in the Prince Edward County school case. All of them had been visited by representatives of the Boatwright Committee of the Legislature, which had been created by Chapter 34 of the Acts passed at the Extra Session, and had been authorized to make a thorough investigation into the activities of corporations or associations which seek to influence, encourage or promote litigation relating to racial activities in the State. These witnesses testified either that they did not know that they were parties to the Prince Edward suit or that they merely wanted better schools for their children and did not want integrated schools. They also testified that they suffered no mistreatment by reason of their names being used as plaintiffs in the suit. The evidence, however, shows that the first step leading to the litigation in Prince Edward County was a strike of the children in the colored high school who refused to attend classes for a period of two weeks as a protest against the undesirable conditions in the school. After the strike there were meetings of the parents in the school building and in the nearby Baptist Church which were addressed by lawyers of the legal staff of the Virginia State Conference of the Association, who were in attendance at the request of the parents of the children, as well as by other persons. The speakers expressed the opinion that in order to secure fair treatment for the colored pupils it would be necessary to institute a suit for the establishment of an integrated school. It was further shown that each of the six witnesses had signed a [fol. 80] paper authorizing Hill, Martin and Robinson, attorneys, to act for and on behalf of them and their children to secure such educational opportunities as they might be entitled to under the Constitution and laws of the United States and to represent them in all suits of whatever kind pertaining thereto. The record in the Prince Edward case shows that 186 persons were joined as parties plaintiff.

The Attorney General of Alabama testified as to racial disturbances and disorders in 1955 and 1956 arising in his State in connection with the attempt to enroll colored students in white schools and involving acts of violence and personal injury to colored persons. He attributed these activities in large part to white men associated in a splinter organization of the Ku Klux Klan and expressed the opinion that the registration of members of the organization under an act like Chapter 32 in this case would aid in the identification and successful prosecution of the offenders. Similarly he thought it would be helpful to require the registration of members of a Negro organization in Tuskegee, which succeeded in some measure to the work of the N.A.A.C.P. after it had been enjoined from operating in Alabama and had engaged in boycotting white merchants in the community and for this purpose had engaged in threats and acts of intimidation. The Attorney General conceded that he was hostile to the N.A.A.C.P. and had filed suit against it in his State demanding a list of its members, but that he had not filed such suit against the Ku Klux Klan.

The sheriffs of four southside Virginia counties in which the Negro population ranges from 45 per-cent to 54 per-cent, and in one instance to 77 per-cent of the total, testified that the relation of the races in their jurisdictions was good but that in their opinion integration in the public schools would result in disturbances and, perhaps, in bloodshed; and that a list of persons active in racial matters would aid [fol. 81] them in preserving the peace and in selecting deputies to enforce the law. We find that the opposition to integration in the public schools is especially strong in this section of Virginia. The Superintendent of the Virginia State Police agreed with the opinion that lists of persons active in racial matters would help law enforcement even though the lists might contain thirteen or fourteen thousand names.

A representative of the law department of the Association of American Railroads testified for the defendants that through investigations he had become familiar with the solicitation of personal injury claims by attorneys, and generally with the offenses of barratry and running and

capping; and that such activities occur in Virginia and that the information required to be filed under Chapter 31 of the Acts of the Extra Session would be helpful in investigating such activities.

Mr. C. Harrison Mann, Jr., a lawyer and a delegate to the General Assembly, testified on behalf of the defendants that he was the chief patron of the Acts of Legislature now in suit and that he was moved by two purposes in connection with the legislation. He was alarmed at the activities of a white leader who is violently fighting integration in the eastern part of the United States and was operating in Washington shortly before the Extra Session convened. It was the opinion of the witness that these activities would lead to racial tension and possibly violence and that it was highly desirable that the identities of the responsible people be made known by registration. With respect to the passage of the Acts relating to the practice of law in Virginia, the delegate was influenced by reports in the press that certain persons were joined as plaintiffs in the Prince Edward suit without knowledge that integration of the races in the schools was at issue and that in other parts of the country there were reports that the [fol. 82] Association was soliciting the institution of suits by plaintiffs and practicing law, which he considered to be a breach of legal ethics and bad public policy. He also gave evidence that he was subject to abuse from various sources by reason of his activities.

DEFENDANTS' MOTIONS TO DISMISS

Civil Rights of Corporations

After the institution of the pending suits the defendants filed motions to dismiss in each case on the ground that the complaints did not state a controversy over which the court had jurisdiction. The motions were dismissed after argument and the defendants were required to answer with leave to renew the contention after the hearing on the evidence. They now dispute the jurisdiction of the Court, first, on the ground that a corporation is not a person entitled to bring suit for deprivation of rights, privileges or immunities granted by the Constitution or

laws of the United States under 42 U.S.C. 1983, over which jurisdiction is conferred upon the district courts by 28 U.S.C. §1343(3). It is pointed out that these sections are derived from the Civil Rights Act of 1871, which was enacted to give effect to the provisions of the Fourteenth Amendment and thereby to prevent the deprivation of the rights of natural persons under the color of any state law. Reliance is placed chiefly on the concurring opinion of Justice Stone in *Hague v. C. I. O.*, 307 U.S. 496, where suit was brought by individual citizens and a membership corporation who claimed that under an ordinance of Jersey City they were deprived of the privilege of free speech and free assembly secured to them as citizens of the United States by the Fourteenth Amendment. The ordinance was held unconstitutional as an undue restriction of these rights and relief was granted to the individual plaintiffs but denied to a corporate plaintiff for the reason expressed in [fol. 83] the opinion of Justice Roberts (page 514) that "natural persons and they alone are entitled to the privileges and immunities which Section 1 of the Fourteenth Amendment secures for citizens of the United States". This holding that corporations are not "citizens" within this clause of the Fourteenth Amendment is not disputed; but Justice Stone, who concurred in the judgment but differed with the reasons expressed by his colleagues, wrote a separate opinion in which he went further and made the following statement (page 527):

"Since freedom of speech and freedom of assembly are rights secured to persons by the due process clause, all of the individual respondents are plainly authorized by §1 of the Civil Rights Act of 1871 to maintain the present suit in equity to restrain infringement of their rights. As to the American Civil Liberties Union, which is a corporation, it cannot be said to be deprived of the civil rights of freedom of speech and of assembly, for the liberty guaranteed by the due process clause is the liberty of natural, not artificial, persons. *Northwestern Life Ins. Co. v. Riggs*, 203 U.S. 243, 255; *Western Turf Assn. v. Greenberg*, 204 U.S. 359, 363."

This pronouncement supports the defendants' position but it cannot be said to be a controlling authority since it did not represent the views of the majority of the Court but was concurred in only by Justice Reed (see *City of Manchester v. Leiby*, 1 Cir., 117 F.2d 661, 663, 664).

It is of more importance to note that the opinion of Justice Stone did not discuss the prior decision of the Court in *Grosjean v. American Press Co.*, 297 U.S. 233, where a license tax on advertisement was held invalid at the suit of a newspaper corporation. The Court held (page 244) that freedom of speech and of the press are fundamental rights safeguarded by the due process of law clause of the Fourteenth Amendment against abridgement by state legislation, and although a corporation is not a *citizen* within the meaning of the privileges and immunities clause, it is a *person* within the meaning of the equal protection and due process clause of that amendment. In other words, the corporation was accorded rights to which it would not have been entitled if the rule announced by Justice Stone had been applied.

[fol.84] Subsequent cases have extended this broad interpretation of the word "person" in the Civil Rights Act and have held that a corporation is a person within that Act entitled to challenge the deprivation of rights under color of a state statute to which a money valuation could not be applied. Thus in *McCoy v. Providence Journal Co.*, 1 Cir., 190 F.2d 760, it was held that a newspaper corporation, as well as individual persons employed by the corporation, were entitled to bring suit under 28 U.S.C. 1343(3) to secure the right to inspect public records which had been denied them by municipal authority; and in *Watchtower Bible and Tract Co. v. Los Angeles County*, 9 Cir., 181 F.2d 739, it was held that the District Court had jurisdiction to entertain a complaint of a corporation engaged in the circulation of religious literature that it had been subjected to an unconstitutional tax. Both of these decisions relied upon the pronouncement of the Supreme Court in *Grosjean v. American Press Co.*, supra, and we are in accord with their conclusions. It is true that the Fourteenth Amendment as well as the Civil Rights statutes were enacted for the purpose of securing colored persons against unjustifiable discrimination, but in the development of the law the

protection afforded by the Amendment has not been confined to natural persons, and there is no reasonable ground at this time to deny the protection afforded by the Civil Rights Act to corporations which are engaged through their agents in public speech and in the circulation of literature designed to protect the rights of natural persons in whose interest the enactments were originally passed. In these days, when corporate organization is well-nigh necessary for the conduct of large enterprises, the propriety of including them within the protection of the Act would seem to be obvious; and since the word "person" in the Fourteenth Amendment has been broadly construed to include corporations in the protection of their property rights,⁷ [fol.85] there is no good reason why the same liberality of interpretation should not be used when the corporation is formed not for purposes of profit but for the protection of the liberties of the individuals.

JURISDICTIONAL AMOUNT

Secondly, the defendants contest the right of the plaintiffs to obtain relief in this court under 28 U.S.C. §§1331 and 1332 which confer upon the district courts jurisdiction over civil actions arising under the Constitution and laws of the United States and civil actions between citizens of different states, where the matter in controversy exceeds the sum of \$3,000.00 exclusive of interest and costs. The contention is that the plaintiffs did not allege in their complaints or prove at the hearing sufficient facts to establish the jurisdictional amount. In substance the evidence shows that the membership of the Association in Virginia dropped from 19,436 for the first eight months of 1956, prior to the passage of the statutes in suit, to 13,595 in the first eight months of 1957, after the enactments. In the same

⁷ See *Pennock v. Florida*, 328 U.S. 331 and *Burstyn, Inc. v. Wilson*, 343 U.S. 495, in each of which the Court upheld the right of a business corporation to freedom of speech and freedom of the press. It seems illogical and meaningless to deny the same rights to a nonprofit corporation organized to protect the freedoms of natural persons since the latter may always be properly joined as parties plaintiff in suits brought by the corporation on their behalf. See 66 Yale Law Journal 545, 548.

period the income of the Association in Virginia showed a decline from \$43,612.75 to \$37,470.00, and its national income a decline from \$598,612.84 for the year 1956 to \$425,608.13 for the first eight months of 1957. The Fund also experienced losses in these periods. Its income rose steadily until 1956, when it became \$351,283.32 although its operations in Texas were restrained in September by an order of court. Its income dropped in the subsequent [fol. 86] period, as is shown by contrasting its income of \$180,000.00 for the first eight months of 1957 with its income of \$246,000.00 for the same period of 1956. In Virginia, its income dropped from \$1,859.20 for 1956 to \$424.00 during the first eight months of 1957.

When suit is brought for an injunction to restrain the enforcement of a regulatory statute alleged to be invalid because of its continuing harmful effect upon the plaintiff the jurisdiction of the court is to be tested by the value of the object to be gained. Failure to prove that a sufficient amount of damage has already been sustained will not defeat the remedy if the injury is recurrent or continuous, since the advantage to be gained by the complainant from removal of the burden imposed by the statute is the matter in controversy. *Glenwood Light & Water Co. v. Mutual L. H. & P. Co.*, 239 U.S. 121, 125, 126; *Gibbs v. Buck*, 307 U.S. 66, 74; *American R. Co. v. South Porto Rico Sugar Co.*, 1 Cir., 293 Fed. 670, 673; cf. *McNutt v. General Motors Accept. Corp.*, 298 U.S. 178, 181; *KVOS v. Associated Press*, 299 U.S. 269, 277. Hence the inquiry in the pending suits is not limited to the immediate effect upon the plaintiffs to be expected from the enforcement of the Virginia statutes but extends to the loss likely to flow from their enforcement throughout the years. Nor is the inquiry limited to the impact of the statutes upon the plaintiffs' business in Virginia, because the registration statutes, Chapters 31 and 32, are not confined to business done in Virginia but require both plaintiffs to disclose the details of their business throughout the country including a list of all members, all contributions, and all expenditures; and Chapters 33, 35 and 36, relating to the practice of law, forbid the plaintiffs to pay the costs and expenses of class suits to which most of the contributions received by the

Fund in its recurrent national campaigns are devoted. Taking these facts into consideration, it is manifest that the existence of the required jurisdictional amount is established in each of the cases before the court.

[fol. 87] Certainly it cannot be said that the claim of loss in excess of the jurisdictional amount was made by the plaintiffs in bad faith for the purpose of conferring jurisdiction, or that it has been shown to a legal certainty that less than the amount is involved in the pending suits; and hence the plaintiffs have met the test laid down in the following excerpt from *St. Paul Indemnity Co. v. Cab Co.*, 303 U.S. 283, 288-290:

"The intent of Congress drastically to restrict federal jurisdiction in controversies between citizens of different states has always been rigorously enforced by the courts. The rule governing dismissal for want of jurisdiction in cases brought in the federal court is that, unless the law gives a different rule, the sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal. The inability of plaintiff to recover an amount adequate to give the court jurisdiction does not show his bad faith or oust the jurisdiction. Nor does the fact that the complaint discloses the existence of a valid defense to the claim. But if, from the face of the pleadings, it is apparent, to a legal certainty, that the plaintiff cannot recover the amount claimed, or if, from the proofs, the court is satisfied to a like certainty that the plaintiff never was entitled to recover that amount, and that his claim was therefore colorable for the purpose of conferring jurisdiction, the suit will be dismissed. Events occurring subsequent to the institution of suit which reduce the amount recoverable below the statutory limit do not oust jurisdiction."

RESTRAINT OF CRIMINAL PROSECUTION

The defendants also invoke the familiar rule that ordinarily a court of equity will not restrain a criminal prose-

cution based on a state statute, even if the constitutionality of the statute is involved, since this question can be raised and settled in the criminal case with review by the higher courts as well as in a suit for injunction, *Douglas v. Jeannette*, 319 U.S. 157, 163, 164; and this is especially true where the only threatened action is a single prosecution of an alleged violation of state law. However, it is also well recognized that a criminal prosecution may be enjoined under exceptional circumstances where there is a clear showing of danger of immediate irreparable injury. *Spiel* [fol. 88] *man Motor Co. v. Dodge*, 295 U.S. 89, 95; *Beal v. Missouri Pacific R. Corp.*, 312 U.S. 45, 49. It is obvious that the present case falls in the latter category. The penalties prescribed by the statutes are heavy and they are applicable not only to the corporation but to every person responsible for the management of its affairs, and under Chapter 32 of the statutes each day's failure to register and file the required information constitutes a separate punishable offense. The deterrent effect of the statutes upon the acquisition of members, and upon the activities of the lawyers of the plaintiffs under the threat of disciplinary action has already been noted, and the danger of immediate and persistent efforts on the part of the state authorities to interfere with the activities of the plaintiffs has been made manifest by the repeated public statements. The facts of the cases abundantly justify the exercise of the equitable powers of the court. *Ex parte Young*, 209 U.S. 123, 147; *Truax v. Raich*, 239 U.S. 33; *Western Union Telegraph Co. v. Andrews*, 216 U.S. 165; *Sterling v. Constantine*, 287 U.S. 378.

PRIOR CONSTRUCTION OF STATUTES BY STATE SUPREME COURT

Finally, the defendants urge that we should not exercise the power to restrain the enforcement of the state statutes but should withhold action until the statutes have been construed by the Supreme Court of Appeals of Virginia. This contention is based on the policy defined in decisions of the Supreme Court of the United States that the federal courts should avoid passing on constitutional questions in situations where an authoritative interpretation of state

law may avoid the constitutional issues. Hence if the interpretation of a state statute is doubtful or a question of law remains undecided, the federal court should hold its proceedings in abeyance for a reasonable time pending construction of the statute by the state courts or until efforts to obtain such an adjudication have been exhausted. See *Spector Motor Co. v. McLaughlin*, 323 U.S. 101; *Government & Civic Employees Organ. Com. v. Windsor*, 347 U.S. 901 and 353 U.S. 364; *Shipman v. Dupre*, 339 U.S. 321.

These rulings, however, do not mean that the federal courts lose jurisdiction in cases where the state courts have not passed upon the statute under attack or that the federal court is powerless to take any action until a decision by the state court has been rendered. Such a conclusion could not be reached in the pending case since the federal statutes expressly confer jurisdiction upon the federal courts where civil rights have been violated (42 U.S.C. §1983), or where federal questions are involved (28 U.S.C. §1331). Thus in *Doud v. Hodge*, 350 U.S. 485, where the constitutionality of a licensing and regulatory statute was involved and jurisdiction of the federal court was invoked under 28 U.S.C. §1331, the Court said (page 487):

" * * * This Court has never held that a district court is without jurisdiction to entertain a prayer for an injunction restraining the enforcement of a state statute on grounds of alleged repugnancy to the Federal Constitution simply because the state courts had not yet rendered a clear or definitive decision as to the meaning or federal constitutionality of the statute.

"We hold that the District Court has jurisdiction of this cause. It was error to dismiss the complaint for lack of jurisdiction. The judgment of the District Court is vacated and the case is remanded to it. We do not decide what procedures the District Court should follow on remand."

See also *A. F. of L. v. Watson*, 327 U.S. 582, 599, where, in directing a district court to retain a suit involving the constitutionality of a state statute pending the determina-

tion of proceedings in the state courts, the Supreme Court said that the purpose of the suit in the federal court would not be defeated by this action, since the resources of equity are adequate to deal with the problem so as to avoid unnecessary friction with state policies while cases go forward in the state courts for an expeditious adjudication of state law questions.

[fol. 90] The policy laid down by the Supreme Court does not require a stay of proceedings in the federal courts in cases of this sort if the state statutes at issue are free of doubt or ambiguity. See the opinion of Judge Parker in *Bryan v. Austin*, E.D.S.C., 148 F.Supp. 563, 567-568, where it was said:

"I recognize, of course, that, in the application of the rule of comity, a federal court should stay action pending action by the courts of a state, where it is called upon to enjoin the enforcement of a state statute which has not been interpreted by the state courts, and where the statute is susceptible of an interpretation which would avoid constitutional invalidity. As the federal courts are bound by the interpretation placed by the highest court of a state upon a statute of that state, they should not enjoin the enforcement of a statute as violative of the Constitution in advance of such an interpretation, if it is reasonably possible for the statute to be given an interpretation which will render it constitutional. * * * The rule as to stay of proceedings pending interpretation of a state statute by the courts of the state can have no application to a case, such as we have here, where the meaning of the statute is perfectly clear and where no interpretation which could possibly be placed upon it by the Supreme Court of the state could render it constitutional."

We are not unmindful of the necessity of maintaining the delicate balance between state and federal courts under the concept of separate sovereigns. We agree that the constitutionality of state statutes requiring special competence in the interpretation of local law should not be determined by federal courts in advance of a reasonable oppor-

tunity afforded the parties to seek an adjudication by the state court. With these basic principles we find no fault.

It must be remembered, however, that Congress has not seen fit to restrict the jurisdiction of the district courts by imposing as a condition precedent to action by the federal courts, the judicial pronouncement by the state court in cases where the constitutionality of a state statute is presented and injunctive relief is requested. Concurrent jurisdiction still exists until modified in the wisdom of the legislative branch of our government.

Neither are we given any clear formula to follow under the decisions of the Supreme Court. The more recent decisions of the highest court suggest that statutory three-judge courts should be hesitant in exercising jurisdiction in the absence of state court action, or at least a reasonable opportunity to secure same. It is apparent to us that the Supreme Court has endeavored to grant cautious discretion to district courts in determining whether jurisdiction should be exercised and the matter considered on its merits, as contrasted with the acceptance of jurisdiction as such. Should this court exercise such jurisdiction under the facts and circumstances of this case, bearing in mind the importance of the questions presented?

We are advised that Virginia is not alone in enacting legislation seriously impeding the activities of the plaintiff corporations through the passage of similar laws (43 Va. L. Rev. 1241). As heretofore noted, the problem for determination is essentially a federal question with no peculiarities of local law. Where the statute is free from ambiguity and there remains no reasonable interpretation which will render it constitutional, there are compelling reasons to bring about an expeditious (sic) and final ascertainment of the constitutionality of these statutes to the end that a multiplicity of similar actions may, if possible, be avoided.

CONSTITUTIONALITY OF CHAPTERS 31 AND 32

This discussion brings us at last to a consideration of the attack made on the constitutionality of the statutes in their bearing upon the activities of the plaintiffs. The two registration statutes, Chapters 31 and 32, are free from ambiguities which require a prior interpretation by the

courts of the state and hence the obligation to pass on the question of constitutionality cannot be avoided.

Chapter 32 is the more sweeping of the two. Section 1 declares that harmonious relations between the races are essential to the welfare, health and safety of the people of Virginia and that it is the duty of the government to exercise all available means to prevent conditions which impede the peaceful co-existence of all the peoples in the state, and that therefore it is vital to the public interest that information be obtained with respect to persons or corporations whose activities may cause interracial tension or unrest.

Section 2^a of Chapter 32 requires the registration of any person who in concert with others engages as one of his principal activities (1) in promoting or opposing in any manner the passage of legislation by the General Assembly,

^a "§2. Every person, firm, partnership, corporation or association, whether by or through its agents, servants, employees, officers, or voluntary workers or associates, who or which engages as one of its principal functions or activities in the promoting or opposing in any manner the passage of legislation by the General Assembly in behalf of any race or color, or who or which has as one of its principal functions or activities the advocating of racial integration or segregation or whose activities cause or tend to cause racial conflicts or violence, or who or which is engaged or engages in raising or expending funds for the employment of counsel or payment of costs in connection with litigation in behalf of any race or color, in this State, shall, within sixty days after the effective date of this act and annually within sixty days following the first of each year thereafter, cause his or its name to be registered with the clerk of the State Corporation Commission, as hereinafter provided; provided that in the case of any person, firm, partnership, corporation, association or organization, whose activities have not been of such nature as to require it to register under this act, such person, firm, partnership, corporation, association or organization, within sixty days following the date on which he or it engages in any activity making registration under this act applicable, shall cause his or its name to be registered with the clerk of the State Corporation Commission, as hereinafter provided; and provided, further, that nothing herein shall apply to the right of the people peaceably to assemble and to petition the government for a redress of grievances, or to an individual freely speaking or publishing on his own behalf in the expression of his opinion and engaging in no other activity subject to the provisions hereof and not acting in concert with other persons."

in behalf of any race or color, or (2) in advocating racial integration or segregation; and the statute also requires the registration of any person, (3) whose activities cause or tend to cause racial conflict or violence, or (4) who is engaged in raising or expending funds for the employment of counsel or the payment of costs in connection with racial litigation.

The Association is admittedly engaged in activities (1), (2) and (4) and the defendants have offered evidence [fol. 93] tending to show that these activities, if successful in bringing about integration, would cause racial conflicts and violence. The Fund is engaged in activities (2) and (4).

The sort of registration required by Chapter 32 has a definite bearing upon the validity of the enactment, since a statement of the business of the registrant in much detail is prescribed. The registrant, if a corporation, is required by §3 of the statute to file a statement showing amongst other things the business address of all of its offices, the purpose for which it was formed, a copy of its charter, the names of its principal officers, and the names and addresses of all of the persons through whom it carries on its activities in the state, a list of its members and their addresses, a financial statement of assets and liabilities, an itemized list of its contributions and other income during the preceding year, and a list of its expenditures in detail.

Section 3 provides that, at the time of registration, information as to the preceding year shall be furnished under oath as to the source of any funds received or expended for the purposes set forth in §2, including the name and address of each contributor and an itemized statement of expenditures, and also, if the registrant is a corporation, a list of its members in the state and their addresses and a financial statement showing the assets and liabilities, the source of its income, itemizing contributions and the sources thereof, and a list of expenditures in detail.

Section 5 makes it a misdemeanor for any person to engage in the activities described in §2 without registration, punishable, in the case of a corporation, by a fine not exceeding \$10,000.00, each day's failure to register constituting a separate offense and punishable as such.

Section 6 provides that any person failing to comply with the Act may be enjoined from continuing its activities by any court of competent jurisdiction.

[fol. 94] Section 9 excepts from the Act newspapers, periodicals, magazines or other like means admitted as second class matter in the United States Post Office, as well as radio, television, facsimile broadcast or wire service operations. Also excepted are persons or associations in a political election campaign or persons acting together because of activities connected with political campaigns.

Undoubtedly the burden of supplying these statements imposed upon persons who engage in activities (1) and (2) constitutes a restriction upon the right of free speech which, as we have seen, the Association is entitled to exercise. Hence the question arises whether the statute is within the police powers which, in the past, have been properly exercised in many fields.⁹ The defendants point out that the promoting or opposing passage of legislation covered by clause (1) may involve lobbying, which has long been recognized as a proper subject of regulation by the state and federal governments. Thus it was decided in *United States v. Harriss*, 347 U.S. 612, by a divided court, that the registration provisions of the Federal Regulation of Lobbying Act did not violate freedom of speech, provided the scope of the Act was limited to persons who had solicited or received contributions to influence or defeat the passage of legislation and who intended to accomplish this

⁹ Among the authorities cited by the defendants were cases upholding regulation by registration applicable to vocational activities (*United States v. Harriss*, 347 U.S. 612 (1954) and *United States v. Slaughter*, 89 F.Supp. 205 (1950) on lobbyists; *Viereck v. United States*, 318 U.S. 236 (1943) and *United States v. Peace Information Center*, 97 F.Supp. 255 (1951) on foreign agents), subversion (*Communist Party v. Subversive Activities Control Board*, D.C.Cir., 223 F.2d 531 (1954) and *Albertson v. Millard*, 106 F.Supp. 635 (1952)), and presidential election activities (*Burroughs v. United States*, 290 U.S. 534 (1934)). Cases involving Congressional control of the second class mailing privilege (*Lewis Publishing Co. v. Morgan*, 229 U.S. 288 (1913)), and state control over fraternities in state schools (*Waugh v. Mississippi University*, 237 U.S. 589 (1915) and *Webb v. State University of New York*, 125 F.Supp. 910 (1954)) are also cited.

purpose through direct communication with members of Congress. The plain implication of the decision, as appears clearly from the dissenting opinions, is that unless the Act were so limited it would be an unwarranted interference with the right of free speech. The lobbying statute of the State of Virginia, §§33-20 to 30-28, is likewise limited to those who employ a person to promote or oppose the passage of an act of the General Assembly and to a person accepting such employment. Such a person is required to register his name upon a legislative docket.

The terms of clause (1) of §2 of the Act contain no such limitation. They apply to any person whose principal activities include "the promoting or opposing in any manner the passage of legislation by the General Assembly," excepting however, by §9 of the Act, newspapers and similar publications, communications by radio and television, and persons engaged in a political election campaign. Hence the duty to register is imposed upon anyone who in concert with others merely speaks or writes on the subject, even if he has had no contact of any kind with the legislative body and has neither received nor spent any money to further his purpose. The discriminating and oppressive character of the provision is emphasized by the exemption of persons engaged in a political election campaign who are free to speak without registration, whereas, persons having no direct interest in elections as such and concerned only with securing equal rights for all persons are covered by the statute. Manifestly so broad a restriction cannot be held valid under the ruling of *United States v. Harriss*, supra.

The terms of clause (2) impinge directly upon the field of free speech for they apply to anyone, with the same exceptions, whose present activities include "the advocacy of racial integration or segregation," and so the same problem of the extent of regulatory power is presented. It must be borne in mind in considering the question that the prohibition against laws abridging the freedom of speech, press and assembly contained in the First Amendment is not absolute, for, as was said in *Communications Assn. v. Douds*, 339 U.S. 382, 394 "it has long been estab-

[fol. 96] lished that these freedoms themselves are dependent upon the power of constitutional government to survive." Consequently in that case the non-Communist affidavits required by the Labor Management Relations Act were upheld even though the situation did not meet the clear and present danger test laid down in *Schenck v. United States*, 249 U.S. 47; and in *Dennis v. United States*, 341 U.S. 494, the clear and present danger test was applied in upholding a conviction under the Smith Act, which made it a crime to organize a group which knowingly and wilfully advocates the violent overthrow of the Government of the United States.

The defendants insist that Chapter 32 was enacted for the commendable purpose of protecting the public welfare and safety and therefore should be upheld. They point to the declaration of the policy in the preamble of the statute to eliminate all conditions which impede the peaceful co-existence of all persons in the state and which, according to the testimony of law enforcement officers, is threatened by the effort to establish integration of the races in the public schools. Great dependence is placed upon the decision of the Supreme Court in *Bryant v. Zimmerman*, 278 U.S. 63 (1928), which is described as the leading case in this field most pertinent to the matter now before the court. The Supreme Court upheld a New York statute, aimed at the activities of the Ku Klux Klan, which required associations having an oath-bound membership to file lists of their members and officers with a State officer and made it a crime for members to attend meetings knowing that the registration requirement had not been complied with. It was held that the statute as applied to a member of the Ku Klux Klan would not violate the due process clause of the Fourteenth Amendment since the state, for its own protection, was entitled to the disclosure as a deterrent to violations of the law; and also that there was no denial of equal protection in excepting labor unions, [fol. 97] Masons and other fraternal bodies from the statutes, since there was a tendency on the part of the Ku Klux Klan to shroud its acts in secrecy and engage in conduct inimical to the public welfare.

We do not think that these decisions justify the restriction upon public discussion which Chapter 32 imposes upon the plaintiffs in this case. Obviously the purpose and effect of a regulatory act must be examined in each case in light of the existing situation. In the present instance the executive and legislative officers of the state have publicly and forcibly announced their determination to impede and, if possible, to prevent the integration of the races by all lawful means; and the statutes passed at the Extra Session were clearly designed to cripple the agencies that have had the greatest success in promoting the rights of colored persons to equality of treatment in the past, and are possessed of sufficient resources to make an effort at this time to secure the enforcement of the Supreme Court's decree. The statute is not aimed, as the act considered in *Bryant v. Zimmerman*, at curbing the activities of an association likely to engage in violations of the law, but at bodies who are endeavoring to abide by and enforce the law and have not themselves engaged in acts of violence or disturbance of the public peace.

The Act is not saved, in so far as the plaintiffs are concerned, by making it applicable to advocates of both sides of the dispute so that it requires a disclosure of the names of persons who may be led to acts of violence by reason of their hostility to integration. Such a provision does not lead to equality of treatment under the circumstances known by the Legislature to prevail. Registration of persons engaged in a popular cause imposes no hardship while, as the evidence in this case shows, registration of names of persons who resist the popular will would lead not only to expressions of ill will and hostility but to the loss of members by the plaintiff's Association.

[fol. 98] Nor can the statute be sustained on the ground that breaches of peace may occur if integration in the public schools is enforced. The same contention was made in *Buchanan v. Warley*, 245 U.S. 60, where the court struck down an ordinance of the City of Louisville which forbade colored persons to occupy houses in blocks occupied for the most part by white persons. The court rejected the contention that the prohibition should be sustained on the ground that it served to diminish miscegenation and to pro-

note the public peace by averting race hostility. See pages 73-74:

"This drastic measure is sought to be justified under the authority of the State in the exercise of the police power. It is said such legislation tends to promote the public peace by preventing racial conflicts; that it tends to maintain racial purity; that it prevents the deterioration of property owned and occupied by white people, which deterioration, it is contended, is sure to follow the occupancy of adjacent premises by persons of color.

"The authority of the State to pass laws in the exercise of the police power, having for their object the promotion of the public health, safety and welfare is very broad as has been affirmed in numerous and recent decisions of this court. Furthermore, the exercise of this power, embracing nearly all legislation of a local character, is not to be interfered with by the courts where it is within the scope of legislative authority and the means adopted reasonably tend to accomplish a lawful purpose. But it is equally well established that the police power, broad as it is, cannot justify the passage of a law or ordinance which runs counter to the limitations of the Federal Constitution; that principle has been so frequently affirmed in this court that we need not stop to cite the cases."

This comment strikes home with peculiar force to the situation in Virginia where the attitude of the public authorities openly encourages opposition to the law of the land, which may easily find expression in disturbances of the public peace. That which was said in *Grosjean v. American Press Co.*, 297 U.S. 233, 250, in respect to a state license tax imposed on the owners of newspapers is pertinent here:

" * * * the tax here involved is bad not because it takes money from the pockets of the appellees. If that were all, a wholly different question would be presented. It is bad because, in the light of its history and of its present setting, it is seen to be a deliberate

and calculated device in the guise of a tax to limit the [fol. 99] circulation of information to which the public is entitled in virtue of the constitutional guaranties. A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves."

For our purpose it is of special significance that in *Thomas v. Collins*, 323 U.S. 516, the Supreme Court held invalid a statute which required a union organizer merely to register and secure an organizer's card from a state officer before soliciting membership in a labor union in a public speech. It was said "that as a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with the exercise of free speech and free assembly". The greater burden of the registration statutes in suit is manifest.

The terms of clause (3) of §2 of the statute requiring registration of anyone whose activities cause or tend to cause racial conflicts or violence require little discussion. They are so vague and indefinite that the clause taken by itself does not satisfy the constitutional requirement that a criminal statute must give to a person of ordinary intelligence fair notice of the kind of conduct that constitutes the crime, *United States v. Harriss*, 347 U.S. 612.

Clause (4) of Chapter 32 requires the registration of anyone who engages in raising or expending funds for the employment of counsel or the payment of costs in connection with litigation on behalf of any race or color. In connection with other provisions contained in Chapters 31, 33, 35 and 36 relating to litigation, it constitutes an important part, perhaps the most important part, of the plan devised by the state authorities to impede or to prevent the integration of the races in the schools of the state; and it subjects the participant to all of the details of registration above described.

[fol. 100] In its broad coverage the statute applies to any individual who employs and pays a lawyer to act for him in a law suit involving a racial question. It also covers the plaintiff corporations in their effort to raise the money which in the past has been used to assist the colored people

in the prosecution of suits to secure their constitutional rights both before and after the decision in *Brown v. Board of Education*.¹⁰

The right of access to the courts is one of the great safeguards of the liberties of the people and its denial or undue restriction is a violation of the due process clauses of the Fifth and Fourteenth Amendments. That the restriction is onerous in this instance cannot be denied, for it is not confined to identification of the collectors of the funds but requires the disclosure of every contributor and of every member of the Association whose annual dues may have been used in part to pay the expenses of litigation.

[fol. 101] Undoubtedly a state may protect its citizens from fraudulent solicitation of funds by requiring a collector to establish his identity and his authority to act; and the state may also regulate the time and manner of the solicitation in the interest of public safety and conve-

¹⁰ The reported cases from both federal and state courts in this Circuit in which the Association or the Fund has taken an active part include: *Dawson v. Mayor and City Council of Baltimore City and Lonesome v. Maxwell*, 220 F.2d 386, aff'd mem. 350 U.S. 877, and *Department of Conservation and Development v. Tate*, 231 F.2d 615, cert. denied 352 U.S. 838, dealing with segregation at Maryland public beaches and Virginia public parks; *Morgan v. Commonwealth*, 184 Va. 24, rev'd 328 U.S. 373, and *Flemming v. South Carolina Elec. & Gas Co.*, 224 F.2d 752 and 239 F.2d 277, concerning segregation in bus transportation; *Alston v. School Board of City of Norfolk*, 112 F.2d 992, cert. denied 311 U.S. 693, dealing with discriminatory fixing of school teachers' salaries; *University of Maryland v. Murray*, 169 Md. 478 and *Kerr v. Enoch Pratt Free Library of Baltimore City*, 149 F.2d 212, cert. denied 326 U.S. 721, concerning racial discrimination in professional school admissions; *Briggs v. Elliott*, 103 F.Supp. 920, rev'd 347 U.S. 483, remanded 349 U.S. 294, decree entered 132 F.Supp. 776; *Davis v. County School Board of Prince Edward County*, 103 F.Supp. 337, rev'd 347 U.S. 483, remanded 349 U.S. 294, decree entered sub nom; *Allen v. County School Board of Prince Edward County*, 149 F.Supp. 431, rev'd — F.2d —; *Hood v. Board of Trustees of Sumter County*, 232 F.2d 626; *School Board of the City of Charlottesville, Va. v. Allen and County School Board of Arlington County, Va. v. Thompson*, 240 F.2d 59; *School Board of the City of Newport News, Va. v. Atkins and School Board of the City of Norfolk, Va. v. Beckett*, 246 F.2d 325, cert. den. 355 U.S. —, and *Slade v. Board of Education of Harford County, Md.*, 152 F.Supp. 114, relating to segregation in the public schools.

nience. *Cantwell v. Connecticut*, 310 U.S. 296, 306; *Thomas v. Collins*, 323 U.S. 516, 540. Corrupt Practices Acts which seek to preserve the purity of elections by requiring the disclosure of the identity of those who strive to influence the choice of public officials are also a proper subject of legislative regulation. *Burroughs v. United States*, 290 U.S. 534. The statute before us, however, presents a very different case. It requires not merely the identity of the collector of the funds but the disclosure of the name of every contributor. In effect, as applied to this case, it requires every person who desires to become a member of the Association and to exercise with it the rights of free speech and free assembly to be registered, and the size of his contribution to be shown. This seems to us far more onerous than the requirement of a license to speak, which was struck down as unconstitutional in *Thomas v. Collins*, supra, especially as in this instance the disclosure is prescribed as part of a deliberate plan to impede the contributors in the assertion of their constitutional rights. In our opinion all four clauses of §2 as applied to the plaintiffs in this case are unconstitutional.

In reaching this conclusion we may fairly consider not only the rights of the plaintiff corporations but also the rights of the individuals for whom they speak, particularly the rights of the members of the Association and generally the members of the colored race in whose interests the plaintiffs carry on their work. The rights that the plaintiffs assert take their color and substance from the rights of their constituents; and it is now held that where there is need to protect fundamental constitutional rights the rule of practice is relaxed, which confines a party to the assertion of his own rights as distinguished from the rights of others. See *Barrows v. Jackson*, 346 U.S. 249, 257. This rule was [fol. 102] applied in *Brewer v. Hoxie School District*, 8 Cir., 238 F.2d 91, 104, where the school board in an Arkansas county brought suit to restrain certain organizations from obstructing the board in its efforts to secure the equal protection of the laws to all persons in the operation of the public schools in the district. The court said:

"The school board having the duty to afford the children the equal protection of the law has the correlative right,

as has been pointed out, to protection in performance of its function. Its right is thus intimately identified with the right of the children themselves. The right does not arise solely from the interest of the parties concerned, but from the necessity of the government itself. * * * Though, generally speaking, the right to equal protection is a personal right of individuals, this is 'only a rule of practice', * * * which will not be followed where the identity of interest between the party asserting the right and the party in whose favor the right directly exists is sufficiently close."

[fol. 103] For like reasons Chapter 31, which covers much the same ground as clause (4) of §2 of Chapter 32, must also be held invalid. The introductory paragraph of §2 is as follows:

"No person shall engage in the solicitation of funds from the public or any segment thereof when such funds will be used in whole or in part to commence or to prosecute further any original proceedings, unless such person is a party or unless he has a pecuniary right or liability therein, nor shall any person expend funds from whatever source received to commence or to prosecute further any original proceedings, unless such person is a party or has a pecuniary right or liability therein until any person shall first:"—and then follows

Section 2(1) which requires the corporation to file annually a copy of its charter, a certified list of its officers and directors and members, a statement showing the source of each contribution or other item of revenue received during the preceding year and, if required by the State Corporation Commission, the name and address of each contributor; also a statement showing in detail the expenditures during the preceding year and any other information required by the State Corporation Commission.

Section 3 makes a violation of the Act a misdemeanor punishable by fine of not more than \$10,000 and the denial of admission to do business in the state. Violations of the Act may be enjoined in any court of record having civil

jurisdiction. Every director and officer of the corporation and every person responsible for the management of its affairs is personally liable for the payment of the fine.

Further consideration of the restrictions imposed upon litigation on behalf of the colored race by the Virginia plan will be found in the following discussion in respect to Chapters 33, 35 and 36 also passed at the Extra Session of 1956.

CHAPTER 35

Chapters 33, 35 and 36 all relate to the improper practice of law. They are of prime importance since they furnish the basis for the contention of the prosecuting officers of the state that the plaintiff corporations are unlawfully engaged in the practice of law in Virginia and hence are not entitled to maintain these suits. Chapters 35 and 36, and the amendment of the sections of the Virginia Code relating to the illegal practice of law contained in Chapter 33, are new in the statute law of the state and are essential parts of the plan which deprives the colored people of the state of the assistance of the Association and the Fund in the assertion of their constitutional rights. To this end each of the statutes contains provisions which would bar the As-[fol. 104] sociation and the Fund from continuing to give the kind of assistance to colored plaintiffs in racial litigation which they have rendered for many years in the past.

We consider first Chapter 35 since it contains a carefully phrased definition of the crime of barratry and is free from ambiguity. Barratry is defined in §1 as stirring up litigation; a barrator is one who stirs up litigation; and stirring up litigation means instigating a person to institute a suit at law or equity. The term "instigating", "justified" and "direct interest" are defined in §§1(d), (e) and (f) as follows:

"(d) 'Instigating' means bringing it about that all or part of the expenses of the litigation are paid by the barrator or by a person or persons (other than the plaintiffs) acting in concert with the barrator, unless the instigation is justified.

"(e) 'Justified' means that the instigator is related by blood or marriage to the plaintiff whom he in-

stigates, or that the instigator is entitled by law to share with the plaintiff in money or property that is the subject of the litigation or that the instigator has a direct interest in the subject matter of the litigation or occupies a position of trust in relation to the plaintiff; or that the instigator is acting on behalf of a duly constituted legal aid society approved by the Virginia State Bar which offers advice or assistance in all kinds of legal matters to all members of the public who come to it for advice or assistance and are unable because of poverty to pay legal fees.

"(f) 'Direct interest' means a personal right or a pecuniary right or liability."

The Legislature was careful to make exception of certain special situations and class suits in the following language:

"This act shall not be applicable to attorneys who are parties to contingent fee contracts with their clients where the attorney does not protect the client from payment of the costs and expense of litigation, nor shall this act apply to any matter involving annexation, zoning, bond issues, or the holding or results of any election or referendum, nor shall this act apply to suits pertaining to or affecting possession of or title to real or personal property, regardless of ownership, nor shall this act apply to suits involving the legality of assessment or collection of taxes or the rates thereof, nor shall this act apply to suits involving rates or charges or services by common carriers or public utilities, nor shall this act apply to criminal prosecutions, nor to the payment of attorneys by legal aid societies approved by the Virginia State Bar, nor to proceedings to abate nuisances. Nothing herein shall be construed to be in derogation of the constitutional rights of real parties in interest to employ counsel or to prosecute any available legal remedy under the laws of this State."

The reference to the Virginia State Bar in §§1(e) and (f) is explained by the terms of Chapter 47, also passed at the [fol.105] Extra Session, which authorized the State Bar

through its governing body to promulgate rules and regulations governing the function and operation of legal aid societies, and empowered the Attorney General to enforce such rules and regulations if authorized to do so by the State Bar. The record in this case does not show whether the State Bar has taken action under the statute, but for present purposes this is not important since §1(e) of Chapter 35 limits the regulatory power of the State Bar to legal aid societies which offer advice or assistance in all kinds of legal matters to all members of the public who come to it for advice and assistance and are unable because of poverty to pay legal fees. Organizations such as the Association and the Fund, which offer advice and assistance to a limited class of persons only, could not claim that they were "justified", even if they should have been approved by the State Bar.

Sections 2 and 3 make it a misdemeanor to engage in barratry punishable, if the barrator is a foreign corporation, by a fine of not more than \$10,000 and the revocation of its certificate of authority to do business in the state; and §6 declares that an attorney at law who violates the Act is guilty of unprofessional conduct and that his license to practice law shall be revoked after hearing (under §54-74 of the Code) for such period as the court may determine.

Obviously the plaintiff corporations will be amenable to these penalties if they continue to pay any part of the expenses of racial litigation in Virginia since they would not be "justified" within the terms of §1(e) of the Act; and attorneys at law connected with the plaintiff corporations who prosecute suits for colored persons, when authorized by them to do so, would also be liable to punishment if they assist, as they have done in the past, in bringing it about that any part of the expenses of litigation are paid by the Association or by the Fund.

The broad question is therefore raised as to whether it is within the power of the state to make it a crime for any corporation other than a general legal aid society to pay in whole or in part the expenses of litigation if it has only a general philanthropic or charitable interest in the litigation [fol.106] and does not have the kind of special interest described in the statute. Specifically, as applied to the facts

of this case, the question is whether Virginia may make it a crime for organizations interested in the preservation of civil rights to contribute money for the prosecution of law suits instituted to promote this cause.

The right of the state to require high standards of qualification for those who desire to practice law within its borders and to revoke or suspend the license to practice law of attorneys who have been guilty of unethical conduct is unquestioned. *Schwartz v. Board of Bar Examiners*, 353 U.S. 232; *Richmond Assn. of Credit Men v. Bar Association*, 167 Va. 327; *Campbell v. Third Dist. Committee*, 179 Va. 244. Solicitation of business by an attorney is regarded as unethical conduct and a proper subject of disciplinary action; and it has been held that the state may prohibit a layman engaged in the business of collecting accounts from soliciting employment for this purpose, since a regulation which aims to bring the conduct of the business in harmony with the ethical practices of the legal profession is reasonable. *McCloskey v. Tobin*, 252 U.S. 107. Independent of statute, it is contrary to public policy for a corporation to practice law, directly or indirectly, since the relationship of attorney and client is one involving the highest trust and confidence and cannot exist between an attorney employed by the corporation and a client of the corporation; and so in *Richmond Assn. of Credit Men v. Bar Association*, supra, it was held that a credit association was engaged in the unlawful practice of law when, acting with the authority of creditors, it selected and paid the lawyers who were employed to make the collection by suit or otherwise.

The standards of the legal profession in these respects are carefully set forth in Canon 28 of the Canons of Professional Ethics of the American Bar Association, which condemns the stirring up of strife and litigation and declares it unprofessional for a lawyer to volunteer advice to bring a law suit except in cases where ties of blood, relationship or trust make it his duty to do so. It is declared to be disreputable to engage in such acts as hunting up defects in titles or seeking claims for personal injuries, or employing agents or runners for like purposes.

[fol. 107] It is manifest, however, that the activities of the plaintiff corporations are not undertaken for profit or for

the promotion of ordinary business purposes but, rather, for the securing of the rights of citizens without any possibility of financial gain. Its activities are not covered by Canon 28 but rather by Canon 35 entitled *Intermediaries*, which relates *inter alia* to the aid rendered to indigent litigants by charitable societies and provides in part as follows:

"The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. Charitable societies rendering aid to the indigents are not deemed such intermediaries."

Canon 35 was cited with approval in *Richmond Assn. of Credit Men v. Bar Association*, 167 Va. at 334. Indeed the exclusion of lawyers when acting for benevolent purposes and charitable societies, as distinguished from business corporations, from the restrictions imposed by the canons of Professional Ethics has long been recognized in the approval given by the courts to services voluntarily offered by members of the bar to persons in need, even when the attorneys have been selected by corporations organized to serve a cause in a controversial field. See the historic incidents listed in the opinion *In re Ades*, D.C.-Md. 6 F.Supp. 467, 475; and see also *Gunnells v. Atlanta Bar Assn.*, 191 Ga. 366, 12 S.E. 2d 602, where the Supreme Court of Georgia refused an injunction to restrain the bar association and its members from offering their services to borrowers of money at usurious rates in defense of suits that might be brought against them. The Court said at page 382:

"It is not wrongful to induce a repudiation of an illegal contract. * * * Nor was the defendant's offer to represent free of charge persons caught in the toils of the usurious money-lender in defending against such illegal exactions, and to represent them in bringing ac-

tions to recover amounts illegally paid under loan contract, a violation of the Code, * * * in reference to the solicitation of legal employment and the offense of barratry. We do not believe that it is true, as contended by counsel for the plaintiff, that the enforcement of the usury laws of this State is a matter solely for the law-enforcement officers and of those from whom usury is being exacted, and that it is illegal and unethical for lawyers to publicly criticize an alleged widespread violation of such laws and to seek to eradicate the evil by the means here shown. Much could be said as to why their position in the community makes it entirely appropriate that they undertake such a movement and assume such responsibilities in reference to the general welfare of the public. We see no reason why the judgment of the learned judge should be disturbed."

[fol. 108] Chapter 35, in failing to recognize this settled rule, violates well-established constitutional principles in its bearing upon the plaintiff corporations. "A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment", *Schwartz v. Board of Bar Examiners*, 353 U.S. 232, 238. In the first place, the statute obviously violates the equal protection clause, for it forbids the plaintiffs to defray the expenses of racial litigation, while at the same time it legalizes the activities of legal aid societies that serve all needy persons in all sorts of litigation. No argument has been offered to the court to sustain this discrimination. Moreover, Chapter 35 violates the due process clause, for it is designed to put the plaintiff corporations out of business by forbidding them to encourage and assist colored persons to assert rights established by the decisions of the Supreme Court of the United States. The activities of the plaintiffs as they appear in these cases do not amount to a solicitation of business or a stirring up of litigation of the sort condemned by the ethical standards of the legal profession. They comprise in substance public instruction of the colored people as to the extent of their rights, recommendation that appeals be made to the courts for relief, offer of assistance in prosecuting the cases when assistance is asked,

and the payment of legal expenses for people unable to defend themselves; and the attorneys who have done the work have done so only when authorized by the plaintiffs. The evidence is uncontradicted that the initial steps which have led to the institution and prosecution of racial suits in Virginia with the assistance of the Association and the Fund have not been taken until the prospective plaintiffs made application to one or the other of the corporations for help. In our opinion the right of the plaintiff corporations to render this assistance cannot be denied.

No doubt, the State of Virginia has the right reasonably to regulate the practice of law, but, where that regulation prohibits otherwise lawful activities without showing any rational connection between the prohibition and some permissible end of legislative accomplishment, the regulation [fol. 109] fails to satisfy the requirements of due process of law. Here, under the guise of regulating unauthorized law practice, the General Assembly has forbidden plaintiffs to continue their legal operations.

Chapters 33 and 36 are also phrased so as to interfere with the activities of the plaintiffs. This is done in Chapter 33 by amending §§54-74, 54-78 and 54-79 of Article 7 of the Code relating to malpractice and to the improper solicitation of legal business for an attorney by a "runner" or "capper", so as to include within the definition of these terms a person who employs an attorney in connection with any judicial proceeding in which the person has no pecuniary right or liability. The language of the statute, especially portions of §54-74(6) and §54-78(1),¹¹ is obscure and difficult to

[fol. 110]

¹¹ "§54-74.

(6) 'Any malpractice, or any unlawful or dishonest or unworthy or corrupt or unprofessional conduct', as used in this section, shall be construed to include the improper solicitation of any legal or professional business or employment, either directly or indirectly, or the acceptance of employment, retainer, compensation or costs from any person, partnership, corporation, organization or association with knowledge that such person, partnership, corporation, organization or association has violated any provision of Article 7 of this chapter . . ."

"§54-78. As used in this article:

(1) A 'runner' or 'capper' is any person, corporation, partnership or association acting in any manner or in any capacity as

understand, but the general purpose seems to be to hit any organization which participates in a law suit in which it has no financial interest and also to fasten the charge of mal-practice upon any lawyer who accepts employment from such an organization. If the statute should be so interpreted as to forbid a continuance of the activities of the plaintiff corporations in respect to litigation as described in this opinion, it would in large measure destroy their effectiveness.

Chapter 36, §1(a), is aimed at anyone not having a direct interest in the proceeding, who gives, receives or solicits anything of value as an inducement to any person to commence a proceeding in any court or before any administrative agency of the state or in any United States court in Virginia against the Commonwealth of Virginia, or any department or subdivision thereof, or any person acting as an officer or employee of any of the foregoing. Section 1(b) makes it unlawful for anyone who has no direct interest in the subject matter of the proceeding to advise or otherwise instigate the bringing of a suit or action against any of the defendants above described. Here again the language is ambiguous, and doubts have arisen as to whether the giving of advice to persons as to their constitutional rights amounts

an agent for an attorney at law within this State or for any person, partnership, corporation, organization or association which employs, retains or compensates any attorney at law in connection with any judicial proceeding in which such person, partnership, corporation, organization or association is not a party and in which it has no pecuniary right or liability, in the solicitation or procurement of business for such attorney at law* or for such person, partnership, corporation, organization or association in connection with any judicial proceedings for which such attorney or such person, partnership, corporation, organization or association is employed, retained or compensated.

"The fact that any person, partnership, corporation, organization or association is a party to any judicial proceeding shall not authorize any runner or capper to solicit or procure business for such person, partnership, corporation, organization or association or any attorney at law employed, retained or compensated by such person, partnership, corporation, organization or association.

"(2) An 'agent' is one who represents another in dealing with a third person or persons."

to the "instigation"¹² of a suit or whether the giving of money to needy litigants amounts to an "inducement" to bring a suit. If so construed as to restrict the activities of [fol. 111] the plaintiff corporations disclosed by the evidence in these cases, their effectiveness would be in large measure destroyed. Since Chapters 33 and 36 are vague and ambiguous we do not pass upon their constitutionality.

We have come perforce to these final conclusions since the contrary position cannot be justly entertained. If the Acts of the General Assembly of Virginia should be held to outlaw the activities of the plaintiff corporations, the Commonwealth would be free to use all of its resources in its search for lawful methods to postpone and, if possible, defeat the established constitutional rights of a body of its citizens, while the colored people of the state would be deprived of the resources needed to resist the attack in the state and federal courts. The duty of this court to avoid such a situation, if possible, is manifest.

Accordingly, an injunction will be granted restraining the defendants from proceeding against the plaintiffs under Chapters 31, 32 and 35 because of the activities of the plaintiffs in the past on behalf of the colored people in Virginia as disclosed in the evidence in these cases or because of the continuance of like activities in the future.

As to Chapters 33 and 36, the complaints will be retained for a reasonable time pending the determination of such proceedings in the state courts as the plaintiffs may see fit to bring to secure an interpretation of these statutes; and in the meantime, the court will assume that the defendants will continue to co-operate, as they have in the past, in withholding action under the authority of the statutes until a final decision is reached; and the plaintiffs may petition the court for further action if at any time they deem it their interest to do so.

Hoffman, District Judge, concurs.

¹² In Chapter 35 the verb "to instigate" is given a very precise definition, but in Chapter 36 it is given no definition at all.

[fol. 112] HUTCHESON, District Judge, concurring in part and dissenting:

This Court has before it for determination certain questions which may be resolved into one, simply stated; that is, whether this Court is to be bound by well-known principles of judicial construction, firmly embedded in the fabric of the law and announced time after time by the Supreme Court of the United States, or is this Court to disregard these principles and follow a new course based upon inferences tortuously (sic) drawn from expressions which may be found in some of the opinions? A mere statement of the question demonstrates its importance. That importance is accentuated by the fact that the case involves the traditionally delicate balance between the courts of the states and the Federal Courts. The importance of the principle can hardly be over emphasized.

Repeatedly the Courts have discussed at length the "deeply rooted" doctrine which has become a "time-honored canon of constitutional adjudication" that Federal Courts do not interfere with state legislation when the asserted federal right may be preserved without such interference. We have been told by the Supreme Court in clear language that where it is necessary to construe a state statute in order to determine whether a federal right is involved the construction must be that of the court of the state by which the statute is to be enforced. The rule and the reason for the rule have been made plain by the same authority.

Before discussing the areas in which I find myself in disagreement with my learned associates, I am glad to concur in their decision that the exercise of jurisdiction be withheld as to *Chapters 33 and 36* of the *Acts of the General Assembly* until those statutes have been construed by the courts of the state, although I do not agree with the reasoning upon which that decision is based.

At this point my concurrence ends. Since my views concerning the issues are so much at variance with those expressed in the majority opinion I am constrained to file this separate opinion. In addition to disagreement with the legal conclusions of the majority of the Court, I find

myself in disagreement with their statement of the facts. In my opinion the evidence does not support many factual conclusions recited in the elaborate statement found in the opinion. Since the facts are of minor importance at this point, I shall not undertake to set out the numerous [fol. 113] errors and omissions which appear. It would serve no useful purpose and would unduly prolong this opinion. However, for the record I register my disagreement.

In passing, attention is called to what I regard as an immaterial and unnecessary discussion of extraneous matter relating to the action of the Supreme Court in the School Segregation Cases, speeches of the Governor of Virginia, expressions contained in a report of a Legislative Commission appointed by the Governor, resolutions of the General Assembly, the Constitutional Referendum, and the decisions involving what is known as the Pupil Placement Act. The lengthy recital pertaining to the legislative history can have only one effect, which is to becloud the issue before the Court and to surround the case with an atmosphere foreign to the judicial calm which should prevail when a legal principle is dealt with. I question the relevancy of much of this material at any time, but certainly it can have no proper place here where we are concerned with orderly procedure in a court of law and with a principle of first importance. The issue should not be obscured by an emotional approach.

Such facts as need be stated here are simple and may be briefly recited. Plaintiffs are corporations chartered under the laws of the State of New York and licensed to do business in Virginia. The defendants are the Attorney General of Virginia and certain other officials, charged with enforcing the laws of the Commonwealth. The principal objectives of the plaintiffs, so far as here pertinent, are the dissemination of information concerning the legal rights of members of the colored race, the organization of groups to seek the enforcement of such rights, the solicitation of funds to be used, and the use of such funds, in promoting the objectives stated and in financing litigation involving cases in which it is alleged that members of that race are being discriminated against on account of racial origin.

In Extra Session in 1956 the General Assembly of Virginia passed certain statutes which are the subject matter of the present controversy. Those statutes fall into two categories.

[fol. 114] The first, consisting of *Chapters 31 and 32*, are designed to regulate the conduct of persons or corporations who solicit funds to be used and to expend funds to finance or maintain litigation of others. Emphasis is placed upon activities pertaining to conflicting racial interests. The statutes would be applicable to activities such as those engaged in by the plaintiffs and those of other organizations similarly operating in Virginia.

The second set of statutes, being *Chapters 33, 35 and 36*, are designed to regulate the conduct of those licensed to or engaged in the practice of law in Virginia.

The plaintiffs contend that the statutes are unconstitutional in that if enforced they would be deprived of rights guaranteed under the Fourteenth Amendment to the Constitution of the United States. The relief sought is an injunction and a declaratory judgment. While there are actually two cases brought by separate plaintiffs the issues are such that they are being dealt with as one.

Motions to dismiss for lack of jurisdiction have been filed and there has been a full hearing of the case. The various questions presented have been argued, and may be concisely stated as dealing with the following:

1. Jurisdiction of the Court;
2. Motives of the General Assembly in enacting the statutes;
3. Whether in the exercise of its discretion the Court should accept jurisdiction if it exists;
4. The construction of the statutes.

JURISDICTION OF THE COURT

The jurisdiction of the Court is attacked upon two grounds. The first relates to the jurisdictional amount of \$3,000.00 under the Diversity Statute, and the second relates to the civil rights of a corporation under the *Fourteenth Amendment*.

(a) While it may be debatable, it is my view that the jurisdictional amount has been shown by the evidence presented sufficiently to justify the Court in hearing the cases. [fol. 115] (b) The defendants rely upon *Hague v. C.I.O.*, 307 U.S., 496, in support of their contention that the corporations are not entitled to the privileges and immunities which the *Fourteenth Amendment* secured for citizens of the United States. For present purposes a recital of the facts of that case may be limited to the statement that the plaintiffs consisted of certain individuals and a corporation, all of whom contended that the enforcement of a city ordinance would deprive them of the right of free speech. The case is directly in point. There were a number of opinions filed. In the main syllabus the following language is used:

"The ordinances and their enforcement violate the rights under the Constitution of the individual plaintiffs, citizens of the United States; but a complaining corporation can not claim such rights. P. 514."

In the syllabus covering the opinion of Mr. Justice Roberts substantially the same analysis is given. (2(b)). See also *Section 4* in syllabus of the opinion of Mr. Justice Stone.

In the opinion of Mr. Justice Roberts, in which Mr. Justice Black concurred, the following appears on *page 514*:

"Natural persons, and they alone, are entitled to the privileges and immunities which Section 1 of the *Fourteenth Amendment* secured for 'citizens of the United States'. (Citing Cases). Only the individual respondents may, therefore, maintain this suit."

In the opinion of Mr. Justice Stone, with Mr. Justice Reed concurring, on *page 527* the following language appears:

"Since freedom of speech and freedom of assembly are rights secured to persons by the due process clause, all of the individual respondents are plainly authorized by Section 1 of the Civil Rights Act of 1871 to main-

tain the present suit in equity to restrain infringement of their rights. As to the American Civil Liberties Union, which is a corporation, it cannot be said to be deprived of the civil rights of freedom of speech and of assembly, for the liberty guaranteed by the due process clause is the liberty of natural, not artificial, persons." (Citing cases)

In the concurring opinion of Mr. Chief Justice Hughes on page 532, the following appears:

"With respect to the point as to jurisdiction I agree with what is said in the opinion of Mr. Justice Roberts as to the right to discuss the National Labor Relations Act being a privilege of a citizen of the United States, but I am not satisfied that the record adequately supports the resting of jurisdiction upon that ground. As to that matter, I concur in the opinion of Mr. Justice Stone."

[fol. 116] See dissenting opinion of Mr. Justice Butler.

Mr. Justice McReynolds dissented, being of opinion the case should be remanded to the District Court with instructions to dismiss the bill, he having concluded that the District Court should have refused to interfere with the rights of the municipality to control its parks and streets. He used the following language:

"Wise management of such intimate local affairs, generally at least, is beyond the competency of federal courts, and essays in that direction should be avoided.

"There was ample opportunity for respondents to assert their claims through an orderly proceeding in courts of the state empowered authoritatively to interpret her laws with final review here in respect of federal questions."

See also interpretation of Mr. Justice Frankfurter in *Bridges v. State of California*, 314 U.S., 252, 280, where in a dissenting opinion he discusses the rights of the states in respect of their internal affairs. He cites *Hague* as drawing a distinction between the rights of natural and artificial persons.

The plaintiffs here, both being corporations, contend they are entitled to such protection and point to the earlier case of *Grosjean v. American Press Company*, 297 U.S., 233,¹ and other cases involving corporations engaged in the publication of newspapers, magazines, etc. A careful examination of *Grosjean* discloses that it does not support such contention. On page 244 the Court, after observing that freedom of speech and of the press are *rights of the same fundamental character*, (the Court did not say the rights are the *same* as would appear to be the interpretation by the majority of this Court) safeguarded by the due process of law clause, used the following language:

"Appellant contends that the Fourteenth Amendment does not apply to corporations; but this is only partly true. A corporation, we have held, is not a 'citizen' within the meaning of the privileges and immunities clause. *Paul v. Virginia*, 8 Wall. 168. But a corporation is a 'person' within the meaning of the equal protection and due process of law clauses, which are the clauses involved here. *Covington & Lexington Turnpike Co. v. Sandford*, 164 U.S. 578, 592; *Smyth v. Ames*, 169 U.S., 466, 522."

[fol. 117] The opinion concludes with the following language:

"Having reached the conclusion that the act imposing the tax in question is unconstitutional under the due process of law clause because it abridges the freedom of the press, we deem it unnecessary to consider the further ground assigned that it also constitutes a denial of the equal protection of the laws."

This language should set at rest the contention that that case is controlling as respects the position of the plaintiffs. It could not be clearer that it does not support that contention but it is consistent with *Hague*.

Grosjean and similar cases relate primarily to and are founded upon the right of freedom of the press. It fol-

¹ Cited in *Hague v. C.I.O.* at page 519.

lows that *Hague* is controlling and corporations are not entitled to the rights of a natural person. From the nature of the rights it is obvious that it was never intended that a corporation should enjoy such rights as a natural person. It is equally obvious that freedom of the press should not be limited to natural persons. This appears determinative of the rights of the plaintiffs. I realize that it is a question which properly may be determined by the state court and a determination by this Court at this time might be premature. My view is that it should finally dispose of the case.

MOTIVES OF THE GENERAL ASSEMBLY
IN ENACTING THE STATUTES

The emphasis placed by the majority upon collateral occurrences would indicate reliance upon such occurrences in reaching the conclusions there stated as a justification for disregarding accepted rules of both procedure and construction. The majority has undertaken to assess the motives of the legislative body as a collective whole as distinguished from the familiar rule relating to legislative intention or purpose in construing statutes of uncertain meaning. They say, in effect, that by the enactment of certain other statutes relating to public schools coupled with the statutes now under attack, the Legislature has attempted to provide a legal means of avoiding compliance with the order of the Supreme Court of the United States in the School Segregation Cases. From this premise they infer that the statutes here involved are tainted with illegality by way of association—a somewhat novel concept which seems to have acquired some judicial recognition in recent times. They appear to proceed upon the theory that the Supreme Court has ordered the public schools mixed racially. As has been repeatedly pointed out, the Supreme Court did not make such an order. If lawful means to comply with the order issued and at the same time retain unmixed schools can be found, there is no unlawful thwarting of the Supreme Court mandate and consequently no invalidity shown. However, we are not now concerned with this question.

The issue here goes deeper. That issue is whether the Judicial branch of the Government can sit in judgment upon the collective personal motives or influences activating those charged with the responsibility of conducting the affairs of one of the other co-ordinate branches. If this can be done the result may be far-reaching indeed.

While it is proper for the Court in construing a statute to inquire into the intention or purpose of its enactment when its language is ambiguous or uncertain, inquiry into the motives prompting the members of the legislative body in casting their votes respecting such enactment presents an entirely different situation. *Fletcher v. Peck*, 10 U.S., 87, decided in 1810, contains a discussion of the subject which is applicable today. In his opinion beginning on page 128, Chief Justice Marshall pointed to some of the perplexities which would be involved. Mr. Justice Johnson elaborated upon this in his opinion beginning on page 143. In that case actual fraud coupled with financial gain on the part of legislators was shown but the statutes were recognized as valid. It is inconceivable that the judicial branch of the Government should undertake to exercise the power to inquire into the motives of the legislative branch as a collective body. If the individual members are guilty of fraud or other unlawful conduct, they are subject to legal sanctions as individuals and they are answerable to their constituents at the polls.

Following the lengthy discussion of what is described as the "setting" in which the Acts were passed, the majority ignores *Fletcher v. Peck*, gives a nod of recognition to *Tenny v. Brandhove*, 341 U. S., 367, with an acknowledgment that a court may not inquire into the legislative motive and proceeds with an assertion that the legislative [fol. 119] purpose may be the subject of inquiry, giving as authority *Baskin v. Brown*, 174 Fed. (2d), 391, 392, 393, and *Davis v. Schnell*, 81 Fed. Supp., 872, 873-880, affirmed by per curiam decision in 336 U.S., 933, where it was noted that Mr. Justice Reed was of opinion that since a constitutional provision of a state was involved, probable jurisdiction should be noted and the case argued. From the language used by the majority, it would appear that purpose or intention have been confused with motive.

The first case relied upon, *Davis v. Schnell*, was from a three-judge District Court in Alabama. It involved the right to vote. The Court recited in detail the legislative history of the act. In discussing its views in *Baskin v. Brown*, the Court cited *Davis v. Schnell* and quoted from that opinion concerning the intention and purpose of the legislation. As I read both opinions, they use the term "purpose" as similar or synonymous with "intention". Neither discusses the motives influencing the Legislature and in neither is *Fletcher v. Peck* nor *Tenny v. Brandhove* mentioned. While they tend to give color to the suggestion that motive may be considered, I am unable to accept them as authority for such theory. And see *Lassiter v. Taylor*, 152 Fed. Supp., 295 (E.D.N.C.) (1957), from which may be inferred a position contrary to the *Davis* and *Baskin* cases. *Lane v. Wilson*, 307 U. S., 268, is the third case upon which the majority bases its conclusion upon this point. It must be borne in mind that *Lane v. Wilson* was an action for damages brought under a statute conferring original jurisdiction in such cases upon the Federal Court.

In none of these cases is the question so fully presented and discussed as in *Fletcher* and *Tenny*, in both of which the underlying principle is recognized.

If it be conceded that the Courts may inquire into the personal motives of legislators a maze of avenues of possible inquiry is seen. Must the motive be corrupt; what proof will show corruption—a state of mind or personal gain? Would undue influence vitiate the act? Must the improper motive exist on the part of a majority; if not on the part of a majority, on what number? If bad motive on the part of a majority of the legislature is required, is it necessary that it be a majority of the entire body or of only those who supported the legislation? What type of [fol. 120] proof would be sufficient to show improper motive? Is the burden of proof similar to that required in ordinary cases involving fraud? Must actual fraud be proven or is constructive fraud sufficient? In recognition of the principle that the acts of a sovereign are pure, upon what historic concept can one of the three great branches of a republican form of government denounce

as impure the act of a co-ordinate branch? If this can be done, will it be necessary that the third co-ordinate branch concur in the result? The questions posed show the absurdity of the contention urged by the plaintiffs and apparently approved by the majority of this Court, that the motives of the legislature are a proper subject of inquiry.

Before leaving this subject, I call attention to what seems an inconsistency. Having assumed the power to interpret the statutes and basing that interpretation, at least in part, upon the motives of the Legislature, the majority denounces only some of the statutes and leaves the others for construction by the state court. There naturally arises the question of why such motives should taint only a limited number of the statutes and not others constituting this alleged unlawful scheme.

WHETHER IN THE EXERCISE OF ITS DISCRETION THE COURT SHOULD ACCEPT JURISDICTION IF IT EXISTS

Time after time the Courts have given expression to the propriety of recognizing the delicate balance between the Courts of the states and the Federal Courts. This is as important now as it has been in the past.

This principle of judicial interpretation is based upon the fundamental concept of separate sovereigns embodied in the Constitution of the United States. The Courts have announced in clear and specific language the rule and the reasons for the rule.

Cases almost without number decided by the Supreme Court have recognized and upheld the doctrine now involved which may be illustrated by *Spector Motor Company v. McLaughlin*, 323 U.S., 101, decided in 1944. In that case suit was brought in a Federal District Court to enjoin the enforcement of a tax imposed by the State of Connecticut and a declaratory judgment. The Court pro-[fol. 121] ceeded to pass upon the constitutional questions presented. The statute had not been construed by the Connecticut Court. The following language was used by the Supreme Court:

"It was conceded below that if the Connecticut tax was construed to cover petitioner it would run afoul

the Commerce Clause, were this Court to adhere to what Judge Learned Hand called 'an unbroken line of decisions'. On the basis of what it deemed foreshadowing 'trends', the majority ventured the prophecy that this Court would change its course, and accordingly sustained the tax. In view of the far-reaching import of such a disposition by the Circuit Court of Appeals we brought the case here."

After referring to questions touching the taxing powers of the states and their relation to the Commerce Clause, the Court said:

"We would not be called upon to decide any of these questions of constitutionality, with their varying degrees of difficulty, if, as the District Court held, the statute does not at all apply to one, like petitioner, not authorized to do intrastate business. Nor do they emerge until all other local Connecticut issues are decided against the petitioner. But even if the statute hits aspects of an exclusively interstate business, it is for Connecticut to decide from what aspect of interstate business she seeks an exaction. It is for her to say what is the subject matter which she has sought to tax and what is the calculus of the tax she seeks. Every one of these questions must be answered before we reach the constitutional issues which divided the court below.

"Answers to all these questions must precede consideration of the Commerce Clause. To none have we an authoritative answer. Nor can we give one. Only the Supreme Court of Errors of Connecticut can give such an answer. But this tax has not yet been considered or construed by the Connecticut courts. We have no authoritative pronouncements to guide us as to its nature and application. That the answers are not obvious is evidenced by the different conclusions as to the scope of the statute reached by the two lower courts. The Connecticut Supreme Court may disagree with the District Court and agree with the Circuit Court of Appeals as to the applicability of the statute. But this is an assumption and at best 'a forecast

rather than a determination.' *Railroad Commission v. Pullman Co.*, 312 U.S. 496, 499. Equally are we without power to pass definitively on the other claims urged under Articles I and II of the Connecticut Constitution. If any should prevail, our constitutional issues would either fall or, in any event, may be formulated in an authoritative way very different from any speculative construction of how the Connecticut courts would review this law and its application. *Watson v. Buck*, 313 U.S. 387, 401-402.

"If there is one doctrine more deeply rooted than any other in the process of constitutional adjudication, it is that we ought not to pass on questions of constitutionality—here the distribution of the taxing power as between the State and the Nation—unless such adjudication is unavoidable. And so, as questions [fol. 122] of federal constitutional power have become more and more intertwined with preliminary doubts about local law, we have insisted that federal courts do not decide questions of constitutionality on the basis of preliminary guesses regarding local law. *Railroad Commission v. Pullman Co.*, *supra*; *Chicago v. Fieldcrest Dairies*, 316 U.S. 168; *In re Central R. Co. of New Jersey*, 136 F. 2d. 633. See also *Burford v. Sun Oil Co.* 319 U.S. 315; *Meredith v. Winter Haven*, 320 U.S. 228, 235; *Green v. Phillips Petroleum Co.*, 119 F. 2d. 466; *Findley v. Odland*, 127 F.2d. 948; *United States v. 150.29 Acres of Land*, 135 F. 2d. 878. Avoidance of such guesswork, by holding the litigation in the federal courts until definite determinations on local law are made by the state courts, merely heeds this time-honored canon of constitutional adjudication.

"We think this procedure should be followed in this case."

As will be later shown, the foregoing rule has been consistently applied with a negligible number of exceptions.

On this issue of vital importance the majority opinion seems based upon a quotation found in a dissenting opinion in *Bryan v. Austin* (E.D.S.C.) 148 Fed. Supp., 563, 567, 568. The entire text of that portion of the dissenting

opinion so relied upon may be found in the footnote 2. The italicized portion is that part omitted from the quotation incorporated into the majority opinion.

With due deference to the learned author of that opinion, my examination of the cases cited does not lead me to the same conclusion as that stated, nor have I found any other pronouncements of the Supreme Court which lead me to that conclusion. After an earlier reference to the celebrated declaration of Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheat., 264, concerning the usurpation of jurisdiction, he concedes that in *Shipman v. DePre*, 339 U.S., 321, and *A. F. of L. v. Watson*, 327 U.S., 582, 600, the Supreme Court held that the Federal Courts are bound by interpretation of the statute by the highest court of the state and should not enjoin the enforcement of such statute as violative of the Constitution in advance of such interpretation. The following language is then used:

" * * * if it is reasonably possible for the statute to be given an interpretation which will render it constitutional. This is all that is held by the Supreme Court in such cases as * * * ". *Shipman* and *A. F. of L.*

² "I recognize, of course, that, in the application of the rule of comity, a federal court should stay action pending action by the courts of a state, where it is called upon to enjoin the enforcement of a state statute which has not been interpreted by the state courts, and where the statute is susceptible of an interpretation which would avoid constitutional invalidity. As the federal courts are bound by the interpretation placed by the highest court of a state upon a statute of that state, they should not enjoin the enforcement of a statute as violative of the Constitution in advance of such an interpretation, if it is reasonably possible for the statute to be given an interpretation which will render it constitutional. This is all that is held by the Supreme Court in such cases as *Shipman v. DuPre*, 339 U.S., 321, 70 S. Ct., 640, 94 L. Ed., 877, and *A. F. of L. v. Watson*, 327 U.S. 582, 596, 598, 66 S. Ct. 761, 90 L. Ed. 873. The Supreme Court in *Alabama Public Service Commission v. Southern Railway Co.*, 341 U.S. 341, 344, 71 S. Ct. 762, 95 L. Ed. 1002, recognizes that proceedings should be stayed only where there is involved 'construction of a state statute so ill-defined that a federal court should hold the case pending a definitive construction of that statute in the state courts'. In the case of *Toomer v. Witsell*, 334 U.S. 385, 68 S. Ct. 1156, 92 L. Ed. 1460, in which the District Court had upheld the constitutionality of a state statute, the Supreme Court reversed the decision without

[fol. 123] The learned author then asserts that "the Supreme Court in *Alabama Public Service Commission v. Southern Railway Co.*, 341 U.S., 344, * * * recognizes that proceedings should be stayed *only* where there is involved 'construction of a state statute so ill-defined that a federal court should hold the case pending a definite construction of that statute in the state courts.' " (Emphasis supplied). [fol. 124] I find nothing in *Shipman* referring to the susceptibility of the statute to different interpretations.

A. F. of L. v. Watson, contains the following language on page 599:

"The doubts concerning the meaning of the Florida law indicate that such a procedure is peculiarly appropriate here."

The procedure referred to was an interpretation of the Florida constitutional amendment by the state court before the Federal Court exercised jurisdiction. The case was reversed and remanded, with directions that the bill be retained pending determination of the state court proceedings.

I do not read *Alabama* as supporting the assertion that proceedings should be stayed *only* where an ill-defined statute is involved. The only language I find bearing resemblance to such a doctrine appears on page 344, as follows:

"Federal jurisdiction in this case is grounded upon diversity of citizenship as well as the allegation of a federal question. Exercise of that jurisdiction does

staying proceedings for action by the state courts. And in *Doud v. Hodge*, 350 U.S. 485, 76 S. Ct. 491, 100 L. Ed. 577, the Supreme Court reversed the dismissal of a case by a District Court, 127 F. Supp. 853, where the dismissal was granted on the ground that a statute alleged to be unconstitutional had not been passed upon by the courts of the state. The rule as to stay of proceedings pending interpretation of a state statute by the courts of the state can have no application to a case, such as we have here, where the meaning of the statute is perfectly clear and where no interpretation which could possibly be placed upon it by the Supreme Court of the state could render it constitutional."

not involve construction of a state statute so ill-defined that a federal court should hold the case pending a definitive construction of that statute in the state courts, e.g., *Railroad Commission of Texas v. Pullman Co.*, 312 U.S., 496 (1941); *Shipman v. DuPre*, 339 U.S., 321 (1950). We also put to one side those cases in which the constitutionality of a state statute itself is drawn into question, e.g., *Toomer v. Witsell*, 334 U.S., 385 (1948)."

In that case suit was brought in a Federal Court to enjoin an order of the Alabama Public Service Commission. Without prior action by the state court, the Federal Court heard the case and rendered judgment. After pointing out that state court review was available to the plaintiff, the Supreme Court referring to the "scrupulous regard for the rightful independence of state governments which should at all times actuate the Federal Courts", said:

"Considering that 'few public interests have a higher claim upon the discretion of a chancellor than the avoidance of needless friction with state policies', the usual rule of comity must govern the exercise of equitable jurisdiction by the District Court in this case. Whatever rights appellee may have are to be pursued through the state courts."

[fol.125] In reversing the lower Court, the Supreme Court cited with approval *Great Lakes Dredge and Dock Co. v. Huffman*, 319 U.S., 293, 297-298 (1943).

The other cases referred to in the dissenting opinion are *Toomer v. Witsell*, supra, and *Doud v. Hodge*, 350 U.S., 485. *Toomer*, at best, is also negative authority. In that case jurisdiction was exercised with no discussion of the principle here involved. *Doud* merely said that the Supreme Court has never held that a District Court is without jurisdiction in such cases, although in reversing the District Court for dismissing for lack of jurisdiction the Supreme Court expressly declined to prescribe further procedure on remand. It is obvious that the Supreme Court intended that the approved procedure of obtaining construction by the state court was to be followed.

From what has been said all that I can read into the cases cited as authority for the affirmative assertion that proceedings should be stayed until state court action *only* where an ill-defined statute is involved, is at the most of a negative character and limited to an insignificant number of cases.

The majority adopts that portion of the dissenting opinion in *Bryan v. Austin*, and proclaims as a policy of judicial interpretation that a stay of proceedings in the Federal Courts is not required in cases in which the state statutes at issue are free of doubt or ambiguity. It is respectfully submitted that the pronouncement of such a doctrine is not warranted by the authorities cited. It is true that in some few cases the Supreme Court has not required such prior interpretation but this fact falls far short of establishing a rule of procedure under which proceedings in a Federal Court in a case such as this should be stayed *only* where the statute involved is so ill-defined that its constitutionality is doubtful until it is construed judicially.

Even should the rule so announced be the correct one, it would have no application in this case, as a reasonably careful examination of the statutes will disclose the necessity for interpretation, as later pointed out.

[fol.126] The rule laid down by the Supreme Court and consistently followed is that cited in *Spector v. McLaughlin*, supra. The majority opinion has cited *Spector Motor Company and Government Employees v. Windsor*, 347 U.S., 901 and 353 U.S., 364; *Shipman v. DuPre*, supra; *A. F. of L. v. Watson*, supra. This Court is bound to follow, distinguish or disregard those cases and others to be cited. It has no power to reverse.

The language of the majority discloses that my learned associates have followed the example of the majority of the Court of the Second Circuit in *Spector*. To again quote the Supreme Court in that case on page 103:

"On the basis of what it deemed foreshadowing 'trends', the majority ventured the prophecy that this Court would change its course, and accordingly sustained the tax. In view of the far-reaching import of such a disposition by the Circuit Court of Appeals we brought the case here."

As has been seen, after emphasizing the "deeply rooted" doctrine which it termed "this time-honored canon of constitutional adjudication", the Supreme Court reversed the Circuit Court and remanded the case to await interpretation by the state court.

The decisions of the Supreme Court proclaiming and repeating this principle called the "doctrine of abstention" in *Railroad Commission v. Pullman Company*, 312 U.S., 496, at 501, are so numerous and contain such apt expressions that determining which should be cited and discussed presents a problem. An exhaustive analysis of all would result in a repetitious and unduly long discussion.

Railroad v. Pullman, supra, appears a good starting point. In that case a three-judge District Court enjoined an order of the Texas Railroad Commission. On appeal the Court referred to the fact that the Court consisted of an able and experienced judge of the circuit which includes Texas and of two capable district judges trained in Texas law. Then the Court said:

[fol. 127] "Had we or they no choice in the matter but to decide what is the law of the state, we should hesitate long before rejecting their forecast of Texas law. But no matter how seasoned the judgment of the district court may be, it cannot escape being a forecast rather than a determination. The last word on the meaning of Article 6445 of the Texas Civil Statutes, and therefore the last word on the statutory authority of the Railroad Commission in this case belongs neither to us nor to the district court but to the Supreme Court of Texas. In this situation a federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication."

Could the Court have expressed itself in clearer terms? Referring to earlier cases the Court continued:

"These cases reflect a doctrine of abstention appropriate to our federal system whereby the federal courts 'exercising a wise discretion', restrain their authority because of 'scrupulous regard for the rightful inde-

pendence of the state governments' and for the smooth working of the federal judiciary (citing cases). This use of equitable powers is a contribution of the courts in furthering the harmonious relation between state and federal authority without the need of rigorous congressional restriction of those powers."

The District Court was reversed and the case remanded with directions to retain the bill pending a determination of proceedings in the state court.

What change has come about since 1941 to justify a court in disregarding this clearly stated doctrine?

I find no expression from the Supreme Court changing this rule during the intervening years. On the contrary, as late as May 1957 the Court delivered its opinion in *Government Employees v. Windsor*, 353 U.S., 364. The procedural facts of that case are illuminating and significant. A labor organization and one of its members filed suit against officials of Alabama Alcoholic Beverage Control Board, of which the individual member was an employee. Plaintiffs sought an injunction and declaratory judgment to restrain the enforcement of a statute of Alabama. A three-judge court was convened. Plaintiffs contended that the statute was susceptible to no possible construction other than that of unconstitutionality and that the Federal Court should decline to stay proceedings pending action in the state court. Loss of members by the union and loss [fol. 128] of employment benefits by the members were alleged. As here, no state action was pending. *Toomer v. Witsell*, supra, appears to have been the authority relied upon by plaintiffs. The Court, after citing and discussing cases referred to by me, declined to exercise jurisdiction pending an exhaustion of state administrative and judicial remedies. 116 Fed. Supp., 354. The Supreme Court affirmed. 347 U.S., 901. Thereafter suit was filed in an Alabama Court, which declared the statute applicable to the complainant, its activities and its members and the injunction was denied. On appeal the final decree of that Court was affirmed by the Supreme Court of Alabama. 262 Alabama, 785, 78 Sou. (2d), 646. The case was again

submitted to the District Court. 146 Fed. Supp., 214. That Court said on page 216:

"After a thorough reading and consideration of the final decree of the Circuit Court of Montgomery County in Equity and of the opinion of the Supreme Court of Alabama heretofore mentioned, it is clear to us that the Alabama Courts have not construed the Solomon Bill in such a manner as to render it unconstitutional, and, of course, we can not assume that the state court will ever so construe said statute."

Judgment was entered accordingly.

Upon appeal the Supreme Court in a per curiam opinion (353 U.S., 364), after observing that "none of the constitutional contentions presented in the action pending in the United States District Court were advanced in the state court action", said:

"We do not reach the constitutional issues. In an action brought to restrain the enforcement of a state statute on constitutional grounds, the federal court should retain jurisdiction until a definitive determination of local law questions is obtained from the local courts. One policy served by that practice is that of not passing on constitutional questions in situations where an authoritative interpretation of state law may avoid the constitutional issues. *Spector Motor Co. v. McLaughlin*, 323 U.S. 101, 105. Another policy served by that practice is the avoidance of the adjudication of abstract, hypothetical issues. Federal courts will not pass upon constitutional contentions presented in an abstract rather than in a concrete form. *Rescue Army v. Municipal Court*, 331 U.S., 549, 575, 584. The bare adjudication by the Alabama Supreme Court that the union is subject to this Act does not suffice, since that [fol. 129] court was not asked to interpret the statute in light of the constitutional objections presented to the District Court. If appellants' freedom-of-expression and equal-protection arguments had been presented to the state court, it might have been construed the statute in a different manner. Accordingly, the

judgment of the District Court is vacated, and this cause is remanded to it with directions to retain jurisdiction until efforts to obtain an appropriate adjudication in the state courts have been exhausted."

It is worth noting that in June 1957 a three-judge United States District Court sitting in the Eastern District of North Carolina in *Lassiter v. Taylor*, 152 F. Supp., 295, had before it a case attacking the constitutionality of a statute of the state prescribing a literacy test for voters. The Court said:

"The only question in the case is whether the Act of March 29, 1957, should be declared void and its enforcement against plaintiffs enjoined by the court on the ground that it is violative of their rights under the Federal Constitution."

The Court then proceeded on page 298:

"Before we take any action with respect to the Act of March 27, (sic) 1957, however, we think that it should be interpreted by the Supreme Court of North Carolina in the light of the provisions of the State Constitution. *Government and Civic Employees Organizing Committee, etc. v. S. F. Windsor*, 77 S. Ct. 838." (353 U.S. 364)

The opinion was per curiam but significantly the distinguished jurist who wrote the dissenting opinion in *Bryan v. Austin*, supra, and who sat on the Court in *Baskin v. Brown*, was a member of that Court. It should be recalled at this point that *Government Employees v. Windsor* was decided the previous month.

Inferentially at least, it would appear that the author of the dissenting opinion upon which the majority rests its decision has revised his views since that opinion was filed and has accepted the views reflected in the earlier cases of *Doby v. Brown*, infra, and *Hood v. Board of Trustees*, infra, and the later cases of *Government Employees v. Windsor*, supra, and *Lassiter v. Taylor*, supra. Attention is called to *Hudson v. American Oil Company* (E.D. Va.),

now before the Court of Appeals for the Fourth Circuit, in which decision has been deferred pending a pronouncement by the Supreme Court of Appeals of Virginia of a [fol. 130] question involving an easement in connection with which the state court has not yet announced the policy of the state.

The concurring opinion of Mr. Justice Frankfurter in *Alabama Public Service Commission v. Southern Ry. Co.*, supra, contains an informative review of the legislative history of the statutes opening the inferior Federal Courts to claims arising under state statutes founded on rights under the Constitution and laws of the United States. Prior to 1875 such claims were pursued in the state courts exclusively and brought to the Supreme Court for review of the Federal question. Upon numerous occasions since 1875, Congress has placed restrictions around interference with state actions by the lower Federal Courts and in 1910 an act was passed placing jurisdiction to restrain action of state officials in a District Court consisting of three judges, with the right of appeal directly to the Supreme Court. Not satisfied with this safeguard, additional limitations have been placed upon inferior courts where the action involves matters affecting state laws. In addition to that discussion, attention is called to the action of Congress as late as 1948, when it enacted *Title 28, Section 2254, United States Code*, spelling out in detail a prohibition against Federal action on applications for writs of habeas corpus affecting petitioners in custody pursuant to judgment of state courts until remedies available in courts of the state have been exhausted.

In 1938, the Supreme Court decided the landmark case of *Erie v. Thompson*, 304 U.S., 64, in which it recognized that there had been an invasion of rights reserved by the Constitution to the states and proceeded to correct the error. The case is not in point here except as casting light on the recognition by the Supreme Court of the limited jurisdiction of Federal Courts and it emphasizes the "delicate balance" so often mentioned. The discussion of Mr. Justice Frankfurter in *Alabama v. Southern*, supra, is also illuminating. As will be seen from that opinion he interpreted the majority opinion there as laying down a

fixed rule that in all such cases action by the state court is a prerequisite to interference by the Federal Court. [fol. 131] If his interpretation of Alabama is correct, and it has been followed rather consistently, there is no occasion for further congressional action upon this point as suggested by the majority of this Court. This demonstrates the fallacy of the somewhat disturbing assumption of the majority opinion that unless jurisdiction has been restricted by Congress or the Supreme Court, the inferior United States Courts are free to assume unlimited jurisdiction.

In *Douglas v. Jeannette*, 319 U.S., 157, and a number of similar cases, a somewhat stricter rule against jurisdiction of the Federal Courts appears to have been recognized as applicable to statutes imposing criminal sanctions such as are here involved. However, I prefer to rest my conclusions upon the broad, general rule announced in the cases before cited and discussed without limiting consideration of the question to a special type of litigation. The underlying principle is the same whether the case involves a civil suit for the collection of a tax or the enforcement of a statute denouncing specified conduct as a crime. Both involve the police power and both involve the delicate balance which prevails between sovereign powers.

The cases last cited and quoted from should be sufficient to show with certainty the proper course to be followed by this Court. However, those cases by no means include all in point and, as earlier indicated, the problem here is to limit this discussion to avoid becoming burdensome with a discussion of cumulative authority. Some of the cases in which the doctrine is announced with equal emphasis and apt language are listed in the footnote.³ An examination of these cases discloses that upon numerous occasions the lower courts have undertaken to pass upon the constitu-

³ *Matthews v. Rogers*, 284 U.S., 521, 525-526 (1932)
Great Lakes v. Huffman, 319 U.S., 293, 296-301 (1943)
Meredith v. Winter Haven, 320 U.S., 228, 232 (1943)
Federation of Labor v. McAdory, 325 U.S., 450 (1945)
A. F. of L. v. Watson, 327 U.S., 582, 600 (1946)
Rescue Army v. Municipal Court, 331 U.S., 549 (1947)
Shipman v. DuPre, 339 U.S., 321 (1950)
Stefanelli v. Minard, 342 U.S., 117, 120-123 (1951)
Albertyson v. Millard, 345 U.S., 242 (1953)

tional validity of state statutes only to be reversed by the Supreme Court without consideration by it of the constitutional question, with directions that the lower court await an interpretation of the statutes by the courts of the state affected, e.g. *Railroad v. Pullman*; *Great Lakes v. Huffman*; *Alabama v. Southern*; *Government Employees v. Windsor*. There are many other cases which might be cited and discussed. These cases which have announced the law clearly, [fol. 132] are not being followed by the majority. They have not been distinguished and only a negligible number have been cited. The majority have elected to base their decision upon authority for which the most that can be said is that it is of a negative character and upon a "prophecy of foreshadowing 'trends'." This method of judicial interpretation based upon prophecy was commented upon and rejected by the Supreme Court in *Spector*.

Doud v. Hodge, 350 U.S., 485 (1956)
Beasley v. Texas & Pacific, 191 U.S., 492
Cavanaugh v. Looney, 248 U.S., 453, 457
Fenner v. Boykin, 271 U.S., 240
Gilchrist v. Interborough, 279 U.S., 159
Hawks v. Hamill, 288 U.S., 52, 61
Harrisonville v. Dickey Clay Co., 239 U.S., 334
U. S. v. Dern, 289 U.S., 352
Glenn v. Field Packing Co., 290 U.S., 177
Lee v. Bickell, 292 U.S., 415
Penn. v. Williams, 294 U.S., 176
Spielman Motor Co. v. Dodge, 295 U.S., 89
Di Giovanni v. Camden, 296 U.S., 64, 73
Beal v. Missouri, 312 U.S., 45
City of Chicago v. Fieldcrest Dairies, 316 U.S., 168
Burford v. Sun Oil Co., 319 U.S., 315
Eccles v. Peoples, 333 U.S., 426, 431

Among cases from lower courts peculiarly applicable are:

Lassiter v. Taylor, 152 Fed. Supp., 295, 298
Doby v. Brown, 232 Fed. (2d), 504
Hood v. Board of Trustees, 232 Fed. (2d), 626

For further collection of authorities see:

Tribune Review Publishing Co. v. Thomas, 120 Fed. Supp. 362, 372, and discussion in *Meredith v. Winter Haven*, supra.

[fol. 133] THE CONSTRUCTION OF THE STATUTES

This brings us to a consideration of the questioned statutes.

As far as pertinent here, *Chapters 31 and 32* deal with the authority of the state in the exercise of the police power to pass laws regulating the conduct of corporations operating within the state. Regulatory statutes of this nature are fully recognized and any number might be called to mind. *Bryant v. Zimmerman*, 278 U.S., 63, appears to be the leading case applicable here. There was involved a statute requiring the disclosure of names of members of certain organizations. Petitioner was a member of the Ku Klux Klan, an organization to which the statute was applicable. For failing to comply with the provisions of the statute petitioner was held in custody by the state authorities. Upon denial of a writ of habeas corpus by the state court he appealed to the Supreme Court of the United States. Justice McReynolds was of opinion the case should be dismissed for lack of jurisdiction without any consideration of the merits. The majority of the Court held that the case was of such nature that it had jurisdiction, but recognized the power of the state to enforce the statute saying that the rights of petitioner must yield to the rightful exertion of the police power. The petition was denied.

It has been suggested that the statute was sustained because of the nature of the activities of the Ku Klux Klan. It is true that the Court referred to such activities when discussing the exception of certain other organizations from the operation of the statute but I do not understand the language of the Court as holding that this was a decisive factor.

Another significant case if (sic) *Thomas v. Collins*, 323 U.S., 516. That case involved a Texas statute which required paid labor organizers to register with the Secretary of State and obtain an organizer's card before soliciting [fol. 134] members within the state. An injunction was issued restraining the petitioner from violating the statute. Subsequently he was held guilty of contempt for violating the order. Habeas corpus was denied by the Supreme Court of Texas. On appeal, the Supreme Court of the

United States reversed the judgment of conviction. However, at *page 540* the Court said:

"We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.

"Once the speaker goes further, however, and engages in conduct which amounts to more than the right of free discussion comprehends, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where a reasonable registration or identification requirement may be imposed. In that context such solicitation would be quite different from the solicitation involved here. It would be free speech plus conduct akin to the activities which were present, and which it was said the state might regulate in *Schneider v. State*, supra, and *Cantwell v. Connecticut*, supra. That, however, must be done, and the restriction applied, in such a manner as not to intrude upon the rights of free speech and free assembly. In this case the separation was not maintained." (Emphasis supplied)

See also the concurring opinion of Mr. Justice Jackson. Cf. *Douglas v. Jeannette*, supra.

In a dissenting opinion, concurred in by Chief Justice Stone and Justice Frankfurter, beginning at *page 548*, Justice Roberts said:

"The right to express thoughts freely and to disseminate ideas fully is secured by the Constitution as basic to the conception of our Government. A long series of cases has applied these fundamental rights in a great variety of circumstances. Not until today, however, has it been questioned that there was any clash between this right to think one's thoughts and to express them and the right of people to be protected in their dealings with those who hold themselves out in some professional capacity by requiring registration of those who profess to pursue such callings."

While the statutes impose the duty to register and furnish information concerning names of persons engaged in the solicitation of and contribution to funds for certain purposes, it does not prohibit the solicitation or expenditure of funds provided registration is had and the required information filed. We are not called upon at this time to determine whether the statutes are constitutional or unconstitutional. That is for determination after action by the state court. Should it be proper to follow the reasoning of the majority the Court would be called upon to determine whether they are so plainly unconstitutional that by no interpretation could they be held constitutional. I have found no case under which it can be said they are so plainly in violation of the Constitution that by no interpretation can they be held otherwise.

The remaining statutes, *Chapters 33, 35 and 36*, dealing with the practice of law, are based in part upon the canons of ethics recognized by the American Bar Association, and in part are declaratory of common law offenses.

The statutes are lengthy and the language employed is involved. A consideration of key words found with relation to other general language is necessary to determine the meaning.

Chapter 33, as applied to attorneys, revolves around the phrase "improper solicitation". As applied to a "runner" or "capper" the act denounced is acting as an agent for an attorney, etc.

Chapter 35 denounces as an offense the instigating or attempting to instigate a person or persons to institute a suit. The statutory definition of "instigating" is somewhat ambiguous and will require a judicial interpretation.

In *Chapter 36* the significant language to be construed relates to *inducing* one to act and the giving of advice by one whose professional advice has not been sought in accordance with the canons of legal ethics.

It clearly appears that the language employed must be construed as applied to the facts involved. Upon such construction will depend the decision of whether the statutes apply to the activities of the plaintiffs and the members of the bar employed by them.

It is difficult to understand how the majority reached its conclusion that *Chapters 31, 32 and 35* are clearly in violation of the Constitution but *Chapters 33 and 36* will require an interpretation. If this Court determines that it should hold *Chapters 31, 32 and 35* invalid, why should it not declare *Chapters 33 and 36* valid instead of referring them to the state court for interpretation?*

At the hearing certain officers of the plaintiff corporations testified. Upon that testimony the majority has incorporated in its opinion a statement of the activities of the corporations with relation to the institution of litigation to which they are not parties. Assuming that statement to be correct it is questionable that *Chapters 33, 35 or 36* would be applicable to those engaged in such activities. I express no opinion upon this beyond observing that obviously a question would be involved. Certain it is that in reaching an answer to that question it will be necessary that the meaning of the statutes be construed.

Plaintiffs complain that the statutes are directed at them. Whether this be true or not is immaterial. The evidence shows there are other organizations engaged in counter activities in Virginia. However, this fact merits only passing reference. As pointed out in *Bryant v. Zimmerman*, supra, the constitutional validity of a statute is not affected by the failure of the Legislature to pass laws covering all cases it might reach or covering the whole field of possible abuse.

I expressly refrain from expressing an opinion concerning the constitutional validity of the statutes. As applied by the Courts they might be held valid, they might be found invalid or they might be held valid in part and invalid in part. The point here is that they should be construed by the Courts of the State in which their enforcement will take place. Then and only then can the Federal Courts properly inquire as to their invasion of rights guaranteed by the Constitution of the United States.

* Further, they say Clause (3), Section 2, Chapter 32 is unconstitutional because "vague and indefinite" but Chapters 33 and 36, being "vague and ambiguous", must be interpreted by the state court before their constitutionality can be determined.

To do otherwise would be both to dismiss the obviously questionable language used in places in the statutes and to disregard firmly established principles of construction long accepted by the Federal Courts as applicable in like situations. In this case the Court should observe the "Doctrine of Abstention" referred to by the District Court in *Government Employees v. Windsor*, 116 Fed. Supp., 354, at page 358. To do otherwise is to disregard established principles and to undertake to chart a new course of judicial construction with the hope of successfully prophesying "foreshadowing trends" of judicial action. Failure of the lower court to respect the doctrine of *stare decisis* leads to confusion. Failure to do so in this case disturbs the balance between state and Federal jurisdiction.

CONCLUSIONS

1. (a) The Federal Court has jurisdiction under the *Diversity Statute*.

(b) The plaintiffs being corporations are not entitled to the privileges and immunities of natural persons secured by the *Fourteenth Amendment*.

2. This Court may not inquire into the motives of the members of the General Assembly actuating them in passing the statutes but may consider legislative history when determining the meaning of statutes being construed.

3. While it is my view that the suits are premature, the fact that jurisdiction exists under the *Diversity Statute* coupled with the language of the Supreme Court in *Doud* [fol. 138] v. *Hodge*, and some of the other cases considered, the proper course is to retain the case on the docket of this Court and continue them generally until the Acts have been given a definitive construction by the Courts of Virginia before the Federal Court undertakes to test their validity measured by the Federal Constitution.

/s/ Sterling Hutcheson, United States District Judge.

[fol. 139]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

Civil Action No. 2435

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, a corporation, Plaintiff,

v.

ALBERTIS S. HARRISON, JR., Attorney General of
Virginia, et al., Defendants.

Civil Action No. 2436

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND,
INCORPORATED, a corporation, Plaintiff,

v.

ALBERTIS S. HARRISON, JR., Attorney General of
Virginia, et al., Defendants.

JUDGMENT—Filed April 30, 1958

These actions came on to be heard upon the complaints for relief against the enforcement or execution of Chapters 31, 32, 33, 35 and 36 of the Acts of the General Assembly of Virginia, Extra Session, 1956, the motions to dismiss the complaints, the answers filed, the evidence adduced by the parties and the arguments of counsel.

Upon consideration thereof the Court, having found the facts and reached the conclusions of law stated in its written opinion, has concluded that injunctions should be granted restraining the defendants from enforcing or executing Chapters 31, 32 and 35, and further, that the complaints as to Chapters 33 and 36 do not present causes which this Court should dispose of on their merits at this time.

[fol. 140] It Is Therefore Adjudged, Ordered and Decreed:

1. That the defendants, and each of them, their successors in office and their agents be, and they hereby are, restrained from proceeding against the plaintiffs, their affiliates, officers, members, contributors or attorneys under Chapters 31, 32 or 35 because of their activities in the past on behalf of the colored people in Virginia as disclosed by the evidence in these cases, or because of the continuance of like activities in the future;

2. That the complaints as to Chapters 33 and 36 be, and they hereby are, retained on the docket of this Court for a reasonable time pending the determination of such proceedings in the state courts as the plaintiffs may see fit to bring to secure an interpretation of these two statutes;

3. That the plaintiffs may petition this Court for further relief if at any time they deem it their best interest so to do; and

4. That the plaintiffs recover their costs in these actions from the defendants.

/s/ Morris A. Soper, United States Circuit Judge,
/s/ Walter E. Hoffman, United States District Judge.

For reasons set forth in separate dissenting opinion filed by me on January 21, 1958, I record my disapproval of the foregoing order.

/s/ Sterling Hutcheson, United States District Judge.

[fol. 183] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION
Civil Action No. 2435

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, a corporation, Plaintiff,

v.

ALBERTIS S. HARRISON, JR., Attorney General of
Virginia, et al., Defendants.

Civil Action No. 2436

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND,
INCORPORATED, a corporation, Plaintiff,

v.

ALBERTIS S. HARRISON, JR., Attorney General of
Virginia, et al., Defendants.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed May 22, 1958

I. Notice is hereby given that Albertis S. Harrison, Jr., Attorney General of Virginia; T. Gray Haddon, Commonwealth's Attorney for the City of Richmond, Virginia; William J. Carleton, Commonwealth's Attorney for the City of Newport News, Virginia; Linwood B. Tabb, Jr., Commonwealth's Attorney for the City of Norfolk, Virginia; William J. Hassan, Commonwealth's Attorney for Arlington County, Virginia; and Frank N. Watkins, Commonwealth's Attorney for Prince Edward County, Virginia, the defendants above named, hereby appeal to the Supreme Court of the United States from that part of the

final judgment restraining the enforcement of Chapters 31, 32 and 35, Acts of the General Assembly of Virginia, Extra Session, 1956, against the plaintiffs, their affiliates, officers, members, contributors or attorneys, entered in these actions on April 30, 1958.

This appeal is taken pursuant to 28 U.S.C. § 1253.

II. The clerk will please prepare a transcript of the record in these causes, for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. The complaints filed in Civil Actions No. 2435 and No. 2436.
2. The defendants' motions to dismiss filed in Civil Actions No. 2435 and No. 2436.
3. The defendants' answers filed in Civil Actions No. 2435 and No. 2436.
4. Majority and dissenting opinions of the three-judge district court.
5. Judgment of the three-judge district court.
6. Transcript of trial proceedings, Volumes I through IV, dated September 16, 17, 18 and 19, 1957, respectively, and containing 612 pages as prepared by C. L. Craig, Official Reporter for the United States District Court for the Eastern District of Virginia, Richmond Division.
7. Defendants' Exhibits Nos. 1, 2 and 3.
8. Letter from Oliver W. Hill to Walkley E. Johnson, Clerk, dated October 2, 1957, together with enclosures.
9. Outline of proceedings in the Arlington, Charlottesville, Newport News, Norfolk and Prince Edward school cases filed by the plaintiffs on September 30, 1957, pursuant to stipulation.
10. Notice of this appeal.

III. The following questions are presented by this appeal:

1. Did the three-judge district court err in refusing to dismiss the complaints pertaining to Chapters 31, 32 and 35, Acts of the General Assembly of Virginia, [fol. 185] Extra Session, 1956, on the grounds, or any one of them, set forth in the defendants' motions to dismiss?

2. Did the three-judge district court err in enjoining the enforcement of Chapters 31, 32 and 35, Acts of the General Assembly of Virginia, Extra Session, 1956, against the plaintiffs on the ground that the said statutes deny them rights guaranteed by the Fourteenth Amendment to the Constitution of the United States?

3. Did the three-judge district court err in restraining the enforcement of Chapters 31, 32 and 35, Acts of the General Assembly of Virginia, Extra Session, 1956, not only against the plaintiffs but also against their affiliates, contributors and attorneys?

/s/ David J. Mays, /s/ Henry T. Wickham, Attorneys for Albertis S. Harrison, Jr., T. Gray Haddon, William J. Carleton, Linwood B. Tabb, Jr., William J. Hassan, Frank N. Watkins, 1407 State-Planters Bank Bldg., Richmond 19, Virginia.

/s/ J. Segar Gravatt, Attorney for Frank N. Watkins, Blackstone, Virginia.

Tucker, Mays, Moore & Reed, 1407 State-Planters Bank Bldg., Richmond 19, Virginia, Of Counsel.

[fol. 186] Proof of Service (omitted in printing).

[fol. 187] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

Civil Action No. 2435

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, a corporation, Plaintiff,

vs.

ALBERTIS S. HARRISON, JR., Attorney General of
Virginia, et al., Defendants.

Civil Action No. 2436

NAACP LEGAL DEFENSE AND EDUCATIONAL FUND,
INCORPORATED, a corporation, Plaintiff,

vs.

ALBERTIS S. HARRISON, JR., Attorney General of
Virginia, et al., Defendants.

CROSS-DESIGNATION OF ADDITIONAL PORTIONS OF
RECORD OF APPEAL—Filed June 10, 1958

Appellees, pursuant to Rule 12(1) of the Supreme Court Rules, hereby designate the following portions of the record and proceedings, in addition to those designated by appellants, to be contained in the record on appeal in this action:

1. All exhibits introduced or filed by or on behalf of the appellees, or either of them, including

(a) Plaintiffs' Exhibits Nos. 1, 2, 3, 4, 5.1 through 5.41, 6, 7, 8, 9, 10, 11, 12 and 13.

[fol. 188] (b) Exhibits Nos. 4 to 12, inclusive, attached to the complaint in Civil Action No. 2435.

- (c) Letter From Robert L. Carter to the Clerk, dated September 26, 1957, together with enclosures, filed by the plaintiffs pursuant to stipulation.
- (d) Letter from Oliver W. Hill to Walkley E. Johnson, Clerk, dated October 7, 1957, together with enclosures, filed by the plaintiffs pursuant to stipulation.
2. This cross-designation.

/s/ Oliver W. Hill, Of Counsel for Appellee National Association for the Advancement of Colored People.

/s/ Spottswood W. Robinson, III, Of Counsel for the Appellee NAACP Legal Defense and Educational Fund, Incorporated.

Certificate of service (omitted in printing).

[fol. 190] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 1]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION

Civil Action No. 2435

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE

v.

J. LINDSAY ALMOND, JR., Attorney General, et al.

and

Civil Action No. 2436

N.A.A.C.P. LEGAL DEFENSE AND EDUCATIONAL FUND, INC.

v.

J. LINDSAY ALMOND, JR., Attorney General, et al.

Transcript of Trial Proceedings—September 16, 1957

Richmond, Virginia

Before Honorable Morris A. Soper, Circuit Judge, Honorable Sterling Hutcheson, and Honorable Walter E. Hoffman, District Judges.

[fol. 2]

APPEARANCES:

For the Plaintiffs: Messrs. Thurgood Marshall, Oliver W. Hill, Spottswood W. Robinson, III and Robert L. Carter,

For the Defendants: Messrs. David J. Mays, Henry T. Wickham, John W. Edmonds, Clarence F. Hicks, Assistant Attorney General, and J. Segar Gravatt.

September 16, 1957.

COLLOQUY BETWEEN COURT AND COUNSEL

The court convened at 10:00 a.m.

The Clerk: Civil Action No. 2435, National Association for the Advancement of Colored People, a corporation, v. J. Lindsay Almond, Attorney General for the Commonwealth of Virginia, et al.

Civil Action No. 2436, NAACP Legal Defense and Educational Fund, Incorporated, a corporation, v. J. Lindsay Almond, Jr., Attorney General for the Commonwealth of Virginia, et al.

Gentlemen, are you ready in these cases?

[fol. 3] Mr. Robinson: We are ready.

Mr. Mays: Yes, sir.

Judge Soper: You may proceed.

Mr. Marshall: May it please the Court, there is one formal motion I would like to make.

In 2436 I appear as one of counsel of record. On preparing for the trial of the case, I find that I will have to testify as to the merits of the litigation and, under those circumstances, I believe it is my duty to withdraw as counsel, although I would not wish to do it, but I think I am obliged to do it.

Judge Soper: Very well, sir.

Mr. Mays: We realize that puts the other side under some handicap and it is entirely agreeable to us for him to testify and act as counsel if the Court wishes him to do it.

Judge Soper: We appreciate that. We leave it to the discretion of Mr. Marshall as to what he will do.

I suppose we are all familiar with the general outline of the case and we are ready to proceed with the evidence.

Mr. Mays: We would like to move, sir, that the witnesses be separated.

Judge Soper: Very well. At the request of counsel for the defendant, the witnesses will be taken to another room [fol. 4] and be called as they are needed.

The Marshal: The witnesses will now leave the courtroom, please—all witnesses in this case.

(The witnesses retired.)

Judge Soper: That works for both sides.

Judge Hoffman: It does not apply to Mr. Marshall, I take it.

Judge Soper: It is the understanding of the Court that counsel have arranged with the Stenographers for daily copy.

Mr. Hill: That is correct.

Judge Soper: Very well. We are ready. Are you ready now to proceed?

Mr. Robinson: If Your Honor please, as a preliminary to the calling of the first witness, I would like to direct the Court's attention to an understanding that was reached at the pretrial conference, and that is, upon notification by the plaintiffs of counsel for the defendant, pointing out the statutory material, this would include the statutes, resolutions of the General Assembly of Virginia, legislative documents of the General Assembly of Virginia, and also the Gray Commission Report. Those materials are to be introduced into evidence without further authentication. We notified counsel for the defendants that we would [fol. 5] introduce in evidence pursuant to this stipulation all of the material that comprises Exhibits 4 to 12, inclusive, that are attached to the complaint in No. 2435. If the Court please, this introduction would be for the pur-

poses of both cases and I make reference to the complaint in 2435 only by reason of the fact that it so happens that all of the materials that we want to introduce under the stipulation are contained as exhibits to that complaint.

Judge Soper: Both complaints?

Mr. Robinson: No; most of the materials, as I recall, were common to both complaints but the complaint in 2435 contains all of the statutes, the resolutions, the legislative documents, and the Gray Commission Report that we would introduce in evidence.

Judge Soper: 2435 is the main case, the Association case?

Mr. Robinson: That is correct.

Judge Soper: I assume that for purposes of brevity that when we speak of the Association everybody will know we are talking about the NAACP. I always stutter when I say that and if we can use the word "Association," I think it might be convenient for all of us.

Mr. Robinson: I would like to make it plain, of course, that we are introducing these materials for purposes of [fol. 6] both cases.

Judge Soper: Yes. The question of the admissibility of these things is reserved.

Mr. Mays: That is correct.

Judge Soper: I would like you gentlemen, for the purposes of the Stenographers' record, just without giving the contents, to enumerate those various Exhibits 4 to 12—designate them. Have you got a list of them over there?

Mr. Robinson: Yes, sir.

Judge Soper: If you will, hand that to the Court, and one to the Stenographer.

(Counsel submitted the following list of Exhibits 4 to 12, inclusive.

Exhibit 4:

(a) Chapters 31 to 37 inclusive.

Exhibit 11:

Chapters 56 to 71 inclusive, Acts of Assembly of Virginia, Extra Session 1956.

Exhibit 5:

(b) Report of Virginia Commission on Public Education, Senate Document No. 1, General Assembly of Virginia, Regular Session 1956.

Exhibit 6:

(c) Act of the General Assembly of Virginia, approved December 3, 1955, submitting to the qualified electors of Virginia the question whether there should be a convention to revise and amend Section 141 of the Constitution of Virginia.

[fol. 7] Exhibit 7:

(d) Act of the General Assembly of Virginia, approved January 19, 1956, providing for the election of delegates to such constitutional convention, the issuance of a writ for same, the convening of such delegates, the organization and functioning of such convention and appropriating funds to defray the expenses of the same.

Exhibit 8:

(e) Senate Joint Resolution No. 3, General Assembly of Virginia, Regular Session 1956, adopted February 1, 1956.

Exhibit 9:

(f) Ordinance of March 7, 1956, of said constitutional convention ordaining a revision and amendment of Section 141 of the Constitution of Virginia.

Exhibit 10:

(g) House Joint Resolution No. 97, General Assembly of Virginia, Regular Session 1956, adopted March 10, 1956.

Exhibit 12:

(h) Senate Document No. 1, General Assembly of Virginia, Extra Session 1956, being the message of the Governor to the General Assembly of Virginia at its 1956 Extra Session.

Mr. Carter: We are ready to proceed. We would like to call Mr. Banks.

[fol. 8] W. LESTER BANKS, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Judge Soper: Mr. Carter, is it understood that these witnesses are offered for both plaintiffs?

Mr. Carter: We are going to indicate that. Mr. Banks is offered only for the plaintiff in the case involving the Association.

Judge Soper: I can't hear you.

Mr. Carter: Mr. Banks is offered only with respect to matters involving the Association. We will identify whether they are for one or both before they are—

Judge Soper: Wouldn't it simplify matters if they were introduced generally and it were understood that any evidence which is relevant to either case may be used? Is there any objection to that?

Mr. Mays: No objection.

Judge Soper: All right.

Very well, then, Mr. Carter.

Direct examination.

By Mr. Carter:

Q. Will you give your name, sir?

A. W. Lester Banks.

Q. Where do you live, Mr. Banks?

[fol. 9] A. I reside at 1613 Monteiro Avenue, Richmond, Virginia.

Q. What employment are you following at the present time?

A. I am employed as Executive Secretary of the Virginia State Conference of Branches of the National Association for the Advancement of Colored People.

Q. How long have you been so employed?

A. I have been so employed since March 4, 1947. I began my active duties April 1, 1947.

Q. Is that a full-time or a part-time job?

A. It is a full-time job.

Q. Is it salaried or unsalaried?

A. It is a salaried job.

Q. What is the Virginia State Conference of Branches of the Association?

A. The Virginia State Conference of Branches is an unincorporated association of branches of the NAACP operating in the State of Virginia.

Q. As the Executive Secretary, what are your duties and responsibilities?

A. As Executive Secretary of the Conference, among my duties I have these: First of all, I coordinate the activities of the member branches of the Association operating in the State of Virginia; I supervise the membership and [fol. 10] fund-raising campaigns; I investigate complaints; I appear before state bodies—legislative bodies and commissions—and in addition to that we conduct an intensive educational campaign to educate the people of Virginia generally as to the harmful effects of racial discrimination and segregation. In addition to that, we conduct an intensive registration-poll tax-voting campaigns among the Negroes of the State of Virginia. Those are principally my responsibilities.

By Judge Soper:

Q. How many branches are there?

A. There are 89 active branches, sir.

[fol. 11] Q. What is the relationship of the organization which you are connected with in the Conference with the plaintiff corporation?

A. The Virginia State Conference is a subsidiary of the NAACP, subordinate unit.

Q. What is the organizational structure, Mr. Banks, of the Conference?

A. The organizational structure of the Virginia State Conference, the Conference is composed of the member branches operating in the State of Virginia. These branches meet in annual conventions. Its annual convention, the branches or the delegates of the branches elect officers and the members of our board of directors. At the present time we have serving as officers a president, a vice presi-

dent, a treasurer and eleven members of the board of directors.

Q. Do you have any relationship to the New York corporation? If so, what is it as executive secretary?

A. As executive secretary of the Conference, I am employed by the member branches. The relationship between myself and the New York corporation is that in the performance of my duties I carry out the policies and the program of the Virginia State Conference as those policies and the programs are laid down in the annual conventions and by the board of directors.

[fol. 12] By Judge Soper:

Q. What annual convention?

A. That is my State annual convention.

By Mr. Carter:

Q. What is the policy and the program of the Virginia State Conference?

A. The policy and the program of the Virginia State Conference is to educate Negroes as to what their rights are, to educate the public generally as to the harmful effects of segregation and discrimination, to conduct, annually, membership and fund raising campaigns, to conduct intensive pay-your-poll-tax-registration and vote drives, to encourage individuals to assert their constitutional right; another very important function of the Conference is to assist in cases involved (sic) discrimination.

Q. Would you just briefly be specific about some of the activities? For example, this year what have you done in this area, so that the Court will understand?

A. During 1957, the Conference has conducted an intensive registration or suffrage campaign, so much so until we have employed a full-time assistant to the executive secretary in charge of our voting activities of the State. This particular phase of the Conference program is designed to encourage Negroes in the State of Virginia to become qualified in the use of the ballot.

[fol. 13] Another phase that has been conducted during 1957, we have conducted a membership campaign, our fund-

raising campaign, in view of giving aid and assistance to worthy cases. We have, in 1957, appeared before commissions and legislative bodies. During this year we have also attempted to influence the passage of civil rights legislation on a national level. In addition to that, during this year we have assisted in at least one case involving segregation in public education.

Q. Do you have any specific responsibility, Mr. Banks, with respect to soliciting membership for the Association in this State?

A. Yes, I have. My responsibility in connection with soliciting membership—first of all, it is my responsibility to consult with our member branches in determining the membership goal for the year. After those goals have been determined, among my other responsibilities I have to suggest, and, in many cases, help initiate, the actual membership campaign.

Q. Do you have any knowledge as to the number of members in the Association in Virginia this year?

A. Yes, I have.

Q. Do you have a figure as to that? And what is it, if you do?

A. I have a figure. May I refer to my notes?

[fol. 14] Q. To refresh your memory.

Mr. Carter: You have no objection?

Mr. Mays: Not a bit.

A. The membership standing for the first eight and one-half months of 1957 is 13,595.

By Mr. Carter:

Q. What was the membership for 1956?

A. For the same period, sir?

Q. Yes.

A. For the same period the membership of the Virginia branches was 19,436.

Q. Do you have for 1955?

A. Yes, I have. The figures for 1955 for the same period were 16,130.

Q. Read off the figures that you do have.

A. We have the same figures for the period for 1954.

Those figures were 13,583. I also have the complete figures for the 12 months period of nineteen—I believe I said '53, the other was '54. For 1953, from January 1, to December 31, the membership was 11,552.

Q. From those figures for 1957, while you are looking at the record, during the eight months your membership figures were what?

A. 13,595.

Q. What was the figures for last year?

[fol. 15] A. For the same period last year, the membership was 19,436.

Q. When did it come to your attention, officially, if it did, that there was a drop in membership in the NAACP?

A. It came to my attention officially that there was a difficulty in securing members after our membership campaign had been initiated for 1957.

Q. When was that?

A. It was the latter part of March or the first of April. However, it was brought to my attention earlier in the year that there was a great apprehension on the part of some of our older members, some of our prospective members, that there might be a drop in membership in 1957.

Q. When the drop was brought to your attention, did you do anything about it? And if you did do anything about it, what?

A. Yes, we did. As soon as the drop in membership came to my attention, I immediately made contact with our branches that were then in the midst of their campaign and I talked to the president, the secretary, and some of the members of the membership committees and went into the community; and those individuals invariably told me that the drop in membership—

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Mays: If Your Honor, we object to the hearsay. [fol. 16] Judge Soper: How about that, Mr. Carter?

Mr. Carter: I think what he is trying to do is indicate the investigation that he undertook and how he went about his investigation and this is his description that he is giving. I think he can describe it, Your Honor, without using the words what someone told him. But I gather that he is

attempting to to (sic) describe what he did to determine the reasons for the drop in membership and how he reached his conclusion. I think he can testify to that.

Judge Soper: I assume for purposes of this statement that the climate of public opinion amongst the colored people has some bearing on this case, judging from the record that I read of the pretrial conference. I am not certain how such a thing could be proved in any other way except by one who investigated it, unless you suggest on behalf of the defendants that individual persons should be produced here to give their own personal reaction.

[fol. 17] Mr. Gravatt: Are you inquiring of us, sir?

Judge Soper: Yes, I would be glad to hear from you, Mr. Gravatt.

Mr. Gravatt: We do not object to the admission of such evidence if it is properly presented, sir. I do not think that this man is competent to testify as to what other people have told him was their experience. People who have had first hand experience in the matter may be competent witnesses to testify, but we object to this witness reciting what others have told him, based upon their experience.

Judge Soper: Is it your position that an investigator who goes into a community for the particular reason of ascertaining what the talk is, what the sentiment is, may not testify in regard to it?

Mr. Gravatt: I do not question—

Judge Soper: Do you go so far as to say that? For instance, here are some thousands of people in a community, is it your position that the individual people, the persons who have this feeling of apprehension, or whatever it may be, must be brought up to tell their personal experience?

Mr. Gravatt: Judge, I think we are on a very delicate [fol. 18] ground when it comes to the probative value of the evidence.

Judge Soper: Surely.

Mr. Gravatt: The fact that there is a drop in membership may be due to a great many reasons, and I think that it is improper for this witness to testify as to what others have told him. These people who have been out undertaking to secure memberships, to come back and tell him something is not proper. And if those people had personal

contacts, it may be. I am not waiving the right to test their proof, but I certainly do not think that this man would have the right to produce it here second handed, or third handed.

Judge Soper: Suppose that Mr. Banks, himself, made an effort to solicit funds and found that it was difficult to do so for the reason that he might indicate; is that objectionable in your view? Suppose he were a collector himself or a solicitor of members and he found the going hard, might he testify to it in your judgment?

Mr. Gravatt: I would not be prepared, sir, to commit myself to a blanket commitment of that kind.

Judge Soper: That is not a blanket commitment, that is [fol. 19] a very specific question. I am asking your attitude on it.

Mr. Gravatt: If he has had first hand experience—

Judge Soper: That was included in my question.

Mr. Gravatt: Yes, sir. If he has had first hand experience I think it might be admissible, certainly much more admissible than the question now before the Court to be ruled on.

By Judge Soper:

Q. In order to clarify the situation, Mr. Banks, will you tell us not for the moment what other people told you, but sort of an investigation did you yourself make?

A. On many instances, we have gone into the branch area. We have been—

Q. I am talking about you, Lester Banks.

A. Well, I have gone into branch areas, sir.

Q. In what?

A. In the areas where we have branches operating. I have been present during kick-off meetings—

Q. When you went there, did you interview their solicitors or did you make any effort yourself to secure contributions among the general public, or is the information which you are now giving us—and I am not questioning the [fol. 20] authenticity of it, perhaps it is the only thing you could do—the information that you want to testify so what you gather from people who themselves were the collectors or solicitors?

A. Well, the information that I want to give the Court, sir, is information that has come directly to me as an investigator of the drop in memberships and also information that has been given to me by our branch officers, the president, secretary or members of the particular membership committee.

Q. The Court is of the opinion that the latter should be excluded. If you had any experience as collector or solicitor among the general public, that may be a different matter, but I do not understand that you are referring to what you did the (sic) solicitor or collector.

A. In that particular instance, I would say that in many instances we have direct contact with prospective members. What I am trying to say, in cases where we have had membership meetings the membership that we have normally been forthcoming for other previous periods, like periods, those memberships were not forthcoming, regardless of the appeals that were made directly to the prospective members. At these meetings I have had on any number of occasions to ask individuals, "Why haven't you renewed your membership?"

[fol. 21] In those instances, individuals have told me that they were apprehensive.

Judge Soper: Go on from there.

By Mr. Carter:

Q. From your own personal investigation, Mr. Banks, and experience in respect to the membership, what reason did you find for the drop in membership?

A. There were a number of reasons, Mr. Carter. One reason that continuously cropped up was the fact that individuals who had previously been members of the association declined to take out a membership in 1957 because of the uncertainty that had been placed upon them in their thinking about these—by the laws that were enacted in the 1956 Special Session. Those individuals, in many instances, were of the lower economic bracket and they did have a fear of having reprisals directed against them. At the same time, these individuals have been certainly conscious of what had happened in other places and the fear was real.

Q. So if I understand your last answer, Mr. Banks, from your personal investigation of the drop in membership, you determined that it was based upon fear, the result of the passage of the statutes?

A. That is correct.

Mr. Carter: Your witness.

[fol. 22] Mr. Gravatt: If Your Honor please, before making a motion to strike out that testimony, I should like the privilege of asking the witness one or two questions, sir, along the line the Court asked him a moment ago when he answered your questions.

Cross examination.

By Mr. Gravatt:

Q. Mr. Banks, is this a conclusion of yours that your drop in membership is based upon fear, is it based upon reports that have been made to you by persons in the branches who were responsible for soliciting memberships?

A. I testified, sir, that on the particular occasions that I mentioned these reports were not from individuals who were solicitors, but individuals who had conversed with me and had so expressed themselves.

Q. You have gone to see persons and asked them to join the local branches?

A. Yes.

Q. And some of those persons have told you that they did not want to do it—because of what?

A. Because of the uncertainty in their minds as to what would happen to them.

Q. How many such people have you talked to?

[fol. 23] A. Oh, I could not give you any number, sir, but in getting around for the first eight and a half months of the year, the number has certainly been quite sizable.

Q. Can you give us an estimate?

A. Oh, I should think certainly I have had occasion to talk to maybe fifty or sixty, or even a hundred individuals.

Mr. Gravatt: We object to the testimony, sir.

Judge Soper: I beg your pardon?

MOTION TO STRIKE TESTIMONY AND
OVERRULING THEREOF

Mr. Gravatt: We move the Court to strike out the testimony of this witness in regard to the fear in relation to this drop in membership, because the conclusion is not warranted.

Judge Soper: The motion is overruled.

Mr. Gravatt: We except, sir.

Mr. Mays: I wonder if it might be understood that when an objection is made by counsel for one side it is for the benefit of other counsel but, to avoid much repetition, it shall apply to both cases?

Judge Soper: I am not clear how the defendants are lined up here.

Mr. Mays: The explanation is this: Mr. Gravatt represents the Commonwealth's Attorney of Prince Edward; I do not represent the other defendants; I do not represent [fol. 24] the Commonwealth's Attorney of Prince Edward County.

Judge Soper: Of course, this Court wants all the light it can get on the subject and all the assistance we can get from counsel, but in order that we may understand the procedure, will the cross-examination of the plaintiffs' witnesses be conducted by Mr. Gravatt, on behalf of the Commonwealth, and by you on behalf of the other defendants?

Mr. Mays: Yes, sir.

Judge Soper: Of course, we are all anxious to get the light. With this array of distinguished counsel at the table, with five cross-examinations, it would extend this matter perhaps more than would be necessary. We would be glad to have you cooperate along those lines.

Mr. Mays: We will certainly try not to repeat the questions.

Judge Soper: Very well.

Mr. Mays: May I proceed?

Judge Soper: Go ahead.

By Mr. Mays:

Q. Mr. Banks, does the conference, that is, the Virginia Conference, spend funds to commence or prosecute further

[fol. 25] the lawsuit in which it is not a party or in which it has no pecuniary right or liability, as far as you know?

A. The conference, in situations involving racial discrimination, aids in supplying monies that are used to pay counsel fee and expenses, in litigation of that character, sir.

Q. Even though it is not a party or has no pecuniary interest of its own; is that correct?

A. That is correct, sir.

Q. How is that money supplied? Is it direct to the litigant, or his attorneys?

Judge Soper: I did not hear the question exactly.

By Mr. Mays:

Q. Is the money supplied directly to the litigant, or to his attorney?

A. To answer that question, sir, the money is supplied to the litigant's attorney.

Q. In all cases?

A. In all cases.

Q. Is that an attorney who is approved by the Conference?

Judge Soper: "Proved," did you say?

Mr. Mays: "Approved" by the Conference.

A. Yes, it is.

Q. And in no case do you pay the money to the litigant [fol. 26] and let him select his own attorney?

A. As far as I know, sir, the monies are paid to the attorney involved.

Q. Does the Conference instigate, maintain, or give legal advice in lawsuits to which it is not a party or in which it has no pecuniary interest or liability?

A. The Conference does not give legal advice.

Q. Does the Conference act as an agent for attorneys at law in the solicitation of lawsuits?

A. The Conference has not.

Q. And never has in your experience?

A. And never has in my experience.

Q. Does the Conference expend the funds for the employment of attorneys or the payment of costs in connection with litigation on behalf of any race in this state?

Judge Soper: On behalf of what?

Mr. Mays: Any race, r-a-c-e.

A. In situations involving racial discriminations, the Conference supplies monies for fees and expenses.

Q. And that is supplied directly to the attorney and not to the litigant?

A. Yes.

Q. Does the Conference instigate or attempt to instigate a person or persons to institute a lawsuit by offering to pay the expenses of litigation?

[fol. 27] A. No, sir, the Conference does not.

Q. It never looks for plaintiffs?

A. The Conference never looks for plaintiffs.

Q. And always it is an instance where the prospective plaintiff comes to the Conference and asks for help?

A. That is correct.

Q. There are no exceptions in your experience?

A. I can think of no exceptions.

Q. Does the Conference act as agent for an attorney at law or any person or organization in connection with judicial proceedings to which it is not a party or in which it has no pecuniary right or liability in the solicitation or procurement of business for such attorney at law or person or organization?

A. The Conference does not, sir.

Q. Does the Conference, in a lawsuit in which it has no direct interest, give any money or other thing of value as an inducement to an individual to commence or to prosecute further a lawsuit in any court in this state?

A. It does not, sir.

Q. When I say in this state, I mean, of course, to include the federal courts, and your answer is the same?

A. That is correct, sir.

Q. Does the Conference give advice to persons bringing lawsuits when such advice has not been in accordance [fol. 28] with the Canons of Ethics of the Virginia State Bar?

Judge Soper: I think your question is much too vague for anybody to answer. I would not be able to tell what all the Canons of Ethics are, and I think it is rather unfair to ask the witness to charge himself with the contents of all the Canons to answer a question in regard to it. Can you ask it and be more specific?

Mr. Mays: If I did, I would have to go through all the Canons, and I won't take the Court's time in that fashion.

Judge Soper: What you are doing is simply paraphrasing the statute and asking him something which is pretty close to legal questions. We are anxious to get all the information about this, but I am not certain a question of this kind is going to help anybody, including counsel for the defendant.

Mr. Mays: Thank you, sir. We withdraw the question.

By Mr. Mays:

Q. Has the Conference paid or agreed to pay any attorney for acting in a lawsuit to which it is not a party or in which it has no pecuniary interest or liability?

A. The Conference in certain instances has supplied [fol. 29] monies for fees and expenses in such cases.

The Court: I wish you would repeat the question. You have the facility of talking very crisply and very quickly. Would the Reporter read the question? Or would you repeat it?

Mr. Mays: My question was, Has the Conference paid or agreed to pay any attorney for acting in a lawsuit to which it is not a party or in which it has no pecuniary interest or liability?

Judge Soper: He has already answered that.

Mr. Mays: All right, sir.

By Mr. Mays:

Q. As far as you know, do the various state conferences and the local branches operate in Virginia in the same manner as they operate in various other states?

A. I am not qualified to answer that, sir.

Q. Very well. Generally speaking, and as far as you know, does the Conference operate in the same manner in

Virginia as it does in other areas of the country? Is that the same answer?

A. The answer is the same.

Q. As far as you know, does the Association solicit plaintiffs in bringing lawsuits?

A. The Association does not solicit plaintiffs in bringing lawsuits.

[fol. 30] Q. Is it the policy of the Conference to finance any lawsuits over which it does not have complete control?

A. As I said a moment ago, sir, in instances where there have been discriminations involved, the Conference in some instances supplies the funds for litigation.

Q. And when you do, do you not insist that the case be conducted exactly in the way the Conference directs?

A. That, sir, is a situation that would be between the attorney and the client.

Q. You leave the entire matter of litigation to the attorney and the plaintiff himself?

A. It is left to the attorney and the plaintiff, yes. There are certain broad principles that the Association has; in other words, the Association is against all forms of racial segregation and discrimination, and it would certainly have to fall within those broad limits.

Q. But, within those limitations you leave it entirely to the litigant and the attorney as to the manner in which the litigation is conducted?

A. That is correct.

Q. And the Conference does not interfere?

A. The Conference has nothing to do with the attorney and the litigant.

Mr. Mays: Thank you.

[fol. 31] By Judge Soper:

Q. May I ask you this along that line: You have been speaking in answer to Mr. Mays's questions about the Conference. That is the group that you personally represent?

A. Yes, sir.

Q. The lawyers in these cases which are being tried for racial disputes are selected by whom?

A. The lawyers are selected by the individuals who have the grievances.

Q. How does the Conference become aware of the grievances?

A. Well, in most instances, sir, individuals who have grievances will bring those grievances either to the local branch or to my office.

Q. And these grievances are of what kind? Can you illustrate it? Are they mostly school cases?

A. No, sir; the grievances are of many varieties. Individuals bring grievances in where they have been victims of police brutality; individuals bring grievances in where they have been denied the use of the ballot; individuals bring grievances in where they have been denied or their children have been denied educational opportunities and facilities. There are many ways in which those grievances commence.

[fol. 32] Q. We may assume, may we, that the reason why the people with these grievances come to your organization is because the public generally has been informed of the work of the Association and the work of the Conference and knows that these two bodies are interested in any question involving racial discrimination or dispute?

A. That is correct, sir.

Q. At your public meetings—you have public meetings, do you not?

A. Yes, we do. The public is informed as to over-all policies and objectives of the Association. The public is well aware of the fact that the Association has since its inception been an organization that has sought to lift the barriers as far as race and cast in America are concerned. The public is made aware of the Association's stand through speeches, through news letters, through press releases, and through public appearances, and it is logical and natural that the individuals who have grievances based upon racial differences would come to the Association.

Q. I assume that the Negro Press carries full accounts of the activities of the Association and the assistance which it gives to the Negro people. Is that true?

A. That is correct, sir; the Negro Press carries full accounts. I might say that not only does the Negro Press

[fol. 33] carry full accounts but the Press generally, but the Negro Press in particular.

Q. They do not hesitate to emphasize the activity of the Association?

A. That is correct, sir.

Q. And it is also true, I assume, that in your membership campaigns and in your solicitation of funds the public is made aware of the services that the colored people may expect from the Association and that the funds will be expended for those purposes?

A. Yes. During our membership and fund-raising campaigns the membership as well as the general public are made aware of the attitudes and the effects of racial segregation and discrimination, not only on the Negro but on the general citizenry of the area, and we attempt in those meetings to get the individuals, particularly the Negro individuals, to understand what their basic rights are and to understand that there are avenues they may seek to relieve those rights if those rights have been violated.

Q. How many colored lawyers are there in Virginia? Do you know?

A. I do not know how many colored lawyers there are, sir.

Q. Now, are not the lawyers who are active in these cases pretty nearly always the same people? Or do you [fol. 34] have numerous representatives in these cases where you get complaints?

A. Well, to answer that question, sir, may I elaborate just a little? The branches of the State of Virginia are grouped together in the Virginia State Conference. These branches meet annually. These branches in their annual convention, not only elect the officers and the board of directors of the convention but they also elect what is known as—or confirm what is known as the State Legal Staff. At the present time that particular staff is composed of thirteen lawyers.

Q. Give me the name of the branch near where you live.

A. The Richmond Branch.

Q. The Richmond Branch holds a meeting and, amongst other business, it selects a number of lawyers in whom it

has confidence. How many lawyers are elected by the Richmond Branch?

A. Well, the Richmond Branch, as such, does not elect any lawyers. The Richmond Branch, as well as all of our branches—they have what is known as Legal Redress Committees, and on those Legal Redress Committees, if there are lawyers in the vicinity or in the area of the branch, in all probability the committee will include one or more lawyers.

[fol. 35] Q. And are they the same lawyers who are likely to be employed in the cases when they get into court in behalf of the individual complainers?

A. In many instances they are the same lawyers; in other instances they are not.

Q. Now, oftentimes, when some individual who probably never had any trouble in his life before of this kind, comes in and makes a complaint; he is not likely to be acquainted with any of the lawyers, is he?

A. No, he is not.

Q. How does he proceed to make the selection? Does he not have to get your advice or the advice of the Conference in order to get the right kind of a lawyer to bring the case?

A. In that particular situation, when a complaint comes in, if the complaint comes into a local branch, the local branch in many instances will bring that complaint to me, as executive secretary. In other instances the complaint comes directly from the individual. The first thing that I attempt to do is to ascertain whether or not the complaint falls within the general classification of the things that the Association is interested in, that is, cases involving discrimination.

Q. Yes.

A. If the complaint is of such a nature as to not fall [fol. 36] within that category, I immediately advise the individual that it is not a case that the NAACP can be interested in. If the complaint falls within the classification of the NAACP's program and if the case seems to indicate that there will be legal action involved, I immediately without further investigation refer the complainant to the

chairman of our State Legal Staff without making any determination.

Q. Then the matter is out of your hands?

A. The matter is completely out of my hands, once I think that the matter might involve some legal aspect.

Q. Do you happen to know what happens from then on, of your own personal knowledge—how it is run by the Legal Staff?

A. Yes, sir, I have some knowledge of it. When the complainant tells his grievance to the chairman of the Legal Staff, in most instances,—and I should say that in some instances, if I may, that the chairman of the Legal Staff might not always be available. If he is not available, then we try to direct the individual to the vice-chairman, and if the vice-chairman is not available, then the individual is directed to some other member of the staff. After the chairman of the Legal Staff has heard the complaint, if he is of the opinion that the complaint is a legitimate one, falling within the realms of NAACP activity, the [fol. 37] chairman of the Legal Staff then makes a recommendation, which is concurred in by the president of the Conference to the executive board of the Virginia State Conference that the Conference will lend certain financial assistance in the prosecution of the complaint.

Q. The complaint first goes to you or to some other representative of the Conference, then to the Legal Staff, and then goes to the executive committee?

A. The chairman of the Legal Staff and the president may—

Q. The president what?

A. The president of the Conference.

Q. Of the whole State Conference?

A. Of the State Conference, yes, sir. They make a recommendation to the Executive Board of the Conference.

Q. When the Executive Board has determined that it is a proper case for prosecution, what is the next step?

A. The next step is left entirely with the chairman of the Legal Staff from then on.

Q. Of that locality, of that particular branch?

A. No; I am constantly referring, sir, to the state; in other words, the State Legal Staff.

Q. Well, who selects the lawyers who carry the case into court?

A. As far as I know, sir, the clients themselves select [fol. 38] the lawyer.

Q. Who would have more information about that than you?

A. Well, the chairman of the Legal Staff would certainly have more information than I, sir.

Judge Soper: Very well.

By Judge Hutcheson:

Q. May I ask a question or two?

I understood you to say a while ago that a complaining member usually selected his own counsel. Was I correct in that?

A. As far as I know, yes, sir.

Q. Now, who refers the matter to your office? Who makes the appearance, or the contact, the individual or his counsel?

A. Well, in many instances the individual brings the matter to my attention or to the Conference's attention. If I think that the matter is something that will involve the law aspect, without hesitation I refer the individual to the chairman of our staff.

Q. You say that in many instances the individual complains. Who makes the complaint in the other instances?

A. By that I simply meant, sir, the individual always makes the complaint, but I was trying to make the distinction that in different branches throughout the state [fol. 39] the individual who has the grievance comes to an official of the local branch and discusses the grievance in the first instance, and then the individual in many cases accompanies officials of the branch to my office and the complaint is again aired.

Q. You said "in many instances." What happens in the other instances?

A. Well, in other instances we have made visits to the area itself—I, rather—and again whenever it is determined that there may be litigation involved, the complainant is referred to the chairman of the Legal Staff or someone else who might be in his stead.

Q. Well, what I was trying to get at was, at what point does the counsel of the complainant's own selection make his appearance?

A. As far as the Conference is concerned, sir, the the (sic) counsel for the complainant makes his appearance when Mr. Hill has recommended that the complainant has a legitimate situation that the NAACP should be interested in.

Q. All right. Up to that point, has the complainant conferred with or selected his own counsel before that time?

A. As far as I know, sir, the plaintiff discusses the legal aspects, or discusses his case with the chairman of the Legal Staff, and from that point on I know nothing about [fol. 40] the procedure until a recommendation has come from the chairman of the Legal Staff, concurred in by the president.

[fol. 41] Q. Does the chairman of the legal staff and his recommendation indicate the identity of counsel who will be assigned or who is handling the case?

A. Not in all instances.

By Judge Soper:

Q. You spoke of Mr. Hill a while ago, is he in charge?

A. Yes, sir. Mr. Hill is chairman of our State legal staff.

By Judge Hutcheson:

Q. Could you tell me by whom and at what point counsel is selected? That is, who determines whether Mr. Hill or Mr. Robinson or Mr. Tucker or different ones will appear in that particular case?

A. I don't know what point that particular action occurred, sir, because that is dealing with the legal aspects of it which I, as executive secretary, have no knowledge of.

Q. Perhaps you will know the answer to this: What percent of the cases, approximately, are handled by counsel who are not members of your legal staff?

A. As far as I know, sir, the cases that are given assistance by the association are all handled by members of the State legal staff.

Q. Who determines the compensation to be paid counsel [fol. 42] sel?

A. The compensation is determined by the board of directors of the Virginia State Conference.

By Judge Hoffman:

Q. Do you have, or have you had, instances in which attorneys are first employed by the litigant himself without any connection or discussion with the association or its legal staff and then thereafter, for reasons either to the litigant himself or to his privately employed attorney, or to the association, other attorneys have appeared in the case? If so, what is the status of the originally privately attorney attorney? (sic)

A. During my experience as executive secretary, I can recall at least one instance—two instances. I recall, some years ago, that Attorney Savage, I believe, from Fredericksburg, was involved in a case and the Conference gave some assistance to that case. I believe, more recently, an attorney by the name of James Overton has been involved in a case and the Conference gave assistance. Both of those individuals are not members of the State legal staff.

Q. When they render that assistance, do they render it to Messrs. Savage or Overton, as the case may be, or do they render the financial assistance so (sic) other attorneys [fol. 43] who are brought in by the association through its staff legal staff?

A. I would think the assistance was rendered by the Conference to the individual case itself. I believe, recalling the case where Attorney Savage was in, and I am trying to recall that, it seems as though the Conference assisted in the payment of the record in that particular case.

Q. That of course would only be expenses and that would go directly to the case. But you previously indicated that the association does make payment to individual attorneys by way of compensation. My inquiry was directed to the line of whether or not the originally employed attorney participated in that compensation or was it paid directly to any other attorney who may have come into the case through the activities of the association, having been re-

quested either by the original attorney or the private litigant to render assistance.

A. I believe, sir, if my memory serves me correct, the case of Attorney James Overton, he was paid directly by the Conference for services rendered in a particular case.

Judge Soper: All right.

By Judge Hoffman:

Q. One moment. When you mentioned Attorney Overton, was a member of the State legal staff associated with him [fol. 44] and compensated in connection with that case?

A. Yes, sir; a member of the State legal staff was associated with Mr. Overton.

Q. And compensated, and Mr. Overton was compensated?

A. As I recall, that was correct.

Q. At whose instance was a member of the State legal staff employed?

A. That, I cannot answer, sir. I mean, I actually don't know. I would assume that it was on the recommendation of the chairman of the legal staff, but I don't know.

Q. That was not a matter which would be passed upon by the executive committee?

A. No, sir, that particular matter would not have been passed by the executive committee.

Q. Who determines the amount of compensation in a case of that kind?

A. I would think that the general rule that the Conference has for its attorneys would be the determining factor as to the compensation for the particular outside attorney.

Q. And that is determined by whom, as a general rule?

A. The general rule is determined by the State Conference Executive Board.

Q. Who would determine whether a member of the State Legal staff should be associated with Mr. Overton or whether Mr. Overton would handle the case on his own and be compensated?

A. Well, sir, that would be to my mind a situation where the attorneys themselves that were involved would decide.

Certainly I should think that the chairman of the Legal Staff would make recommendations.

Judge Hoffman: All right.

Judge Soper: Any question, Mr. Gravatt?

Mr. Gravatt: Yes, sir.

Q. Mr. Banks, when the complainant (sic) that you have been discussing with the Court gets to the point where you have directed him to the Legal Staff, does such member of the Legal Staff as he may get in contact with, the chairman, or the vice chairman or some other person whom you might put him in contact with, determine whether or not the State Conference will support his litigation financially or not?

A. When you say "he",—

Q. I am talking about the member of the Legal Staff with whom the complainant confers at your suggestion?

A. When the complainant is referred to the chairman of the Legal Staff, or some other member of the staff, for [fol. 46] that particular point I have no knowledge of the situation until there comes a recommendation from the staff as to whether this particular situation merits the assistance of the NAACP or not.

Judge Soper: Isn't this correct, Mr. Gravatt, that the matter is first cleared with this witness, Mr. Banks, and then it is cleared with the Legal Staff, and then, if I understood it, it goes further to the Executive Committee or to the governing committee? Is that correct?

Mr. Gravatt: That is what I am trying to find out, where it goes?

By Judge Soper:

Q. What happens after he is cleared with the Legal Staff? That is what Mr. Gravatt wants to know.

Mr. Gravatt: What I want to know is what the Legal Staff decides first.

Judge Soper: They decide whether or not it is a suitable case. They recommend that it be prosecuted or that the Association—

Mr. Gravatt: Has he so testified?

Judge Soper: What happens after that is what you want to know?

Mr. Gravatt: Yes, sir.

A. What happens after that is this: I do not mean [fol. 47] to imply that every time there is a recommendation from the Chairman of the Legal Staff and the President that the Executive Board is called into session and acts on that particular problem. The State Conference, through its Executive Board, has formulated certain broad policies which say that under certain conditions the Conference will assist in the litigation. And when that recommendation comes, or when a case falls within that particular category, then it is automatically——

By Judge Soper:

Q. The fellow who makes that decision is the president of the branch or a member of the Legal Staff?

A. Member of the Legal Staff. The Chairman of the Legal Staff will decide whether or not the complainant has a case that would fall within the bounds of the NAACP's activities. He would recommend or would not recommend that the NAACP lend financial assistance. Before it can be consummated, his recommendation must be concurred in by the President of the Conference.

Q. All right. The President of the Conference has recommended it. Then who selects the lawyer?

A. That, sir, I don't know who selects the individual lawyer. That is a matter between the individual complainant and whoever he wants.

Q. Well, the Chairman of the Legal Staff could give us [fol. 48] that information, I assume.

A. I am certain that he could, sir.

By Judge Hutcheson:

Q. Let me ask one other question. I touched on it a while ago, but if you answered it it is not clear in my mind. Who determines the amount of compensation?

A. The amount of compensation has been set by the Board of the State Conference. Does that answer your question, sir?

Q. I suppose so.

A. What I am trying to say, Judge Hutcheson——

Q. Do you have a regular scale of fees?

A. The Conference has a set fee, per diem fee, that it pays attorneys that are sponsoring or handling cases that the NAACP has.

Q. Office work and trial work?

A. Yes.

By Mr. Gravatt:

Q. Mr. Banks, who is the Legal Committee of the State Conference?

A. The Legal Committee of the State Conference, we call it Legal Staff, I suppose you use the term synonymously——

Q. All right, sir.

A. —are composed of Mr. Oliver W. Hill, as Chairman, [fol. 49] Mr. Martin A. Martin, as Vice Chairman; Attorney Roland L. Ealey; Attorney Spotswood W. Robinson, III, a member—also both of those individuals are from Richmond, Virginia; Attorney S. W. Tucker of Emporia, Greenville County, is also a member; Attorney W. Hale Thompson and Philip Walker, of Newport News, they are also members; in Norfolk, we have two members of the staff, they are Attorneys Victor J. Ash and Hugo Madison; in Alexandria, we have member by the name of Attorney Edwin C. Brown; and in Danville, Virginia, we have another member by the name of Gerry Williams; and in Roanoke, Virginia, we have another member by the name of Rubin E. Lawson; making up a 13-man staff.

Q. All of those attorneys, I presume, are approved by the State Conference for representation of complaints that come to the State Conference?

A. Those attorneys are members of the Legal Staff. They have submitted at various times during the annual convention by the staff itself. They are confirmed, they are appointed to the Legal Staff, is confirmed by the Convention in session, by the delegates of the Convention.

Q. Would you answer specifically my question, please, sir: Have they or have they not been approved by the State Conference for the handling of claims for which the Conference will contribute financially, as attorneys?

[fol. 50] A. Those attorneys have been approved by the

State Conference to carry out the program of the Conference in advising the branches, in advising the Conference, and in carrying on other activities.

Q. Does that mean that they have been approved to handle these complaints that come to you and to the State Conference which are approved for litigation or for legal advice, legal services? They are approved to handle those things?

A. They are approved to investigate those complaints for the Conference.

Q. You mean the Conference has money and the money is used to pay attorneys? I want to know if these attorneys are (sic) approved by the Conference for the payment of their money for their services.

A. Not necessarily, no.

Q. Are there any other attorneys other than these on this committee that are approved by the Conference?

A. The only attorneys that the Conference would be interested in, sir, would be those members of the Conference's Legal Staff.

Q. I just want to get straight—I understood you tell the Court that the complainant, the person who complains, are the litigant, the client, selects his own attorney? [fol. 51]

A. So far as I know, he does.

Q. Do you mean to tell the Court that the State Conference of branches of the NAACP pays money to attorneys who are not approved by the State Conference to represent the litigation that the Conference approves as falling within its activities?

A. Mr. Gravatt, I believe I testified a little earlier in answer to a question posed by Judge Soper that in two instances that I recall offhand, in one involving Attorney Savage and one involving Attorney James Overton, that the Conference supplied certain funds in cases that they were involved in.

Q. I did not understand you to say that they paid any attorneys' fees to either of those gentlemen.

Judge Soper: Yes, he did.

Mr. Gravatt: I understood him to say they paid court costs for the printing of records.

Judge Soper: And attorneys fees, too, he said.

By Judge Soper:

Q. The fact is, to bring the matter to an issue, these 13 who are on the staff are frequently employed in these cases, aren't they, and most of the work that is done for complainants, legal work, is done by these 13?

[fol. 52] A. That is correct, sir.

Q. Sometimes, occasionally, others are employed, but these, for the most part, are the ones who do the work?

A. Yes, sir.

Judge Soper: And are paid by the Association. That is what I thought he meant.

Mr. Gravatt: And I want to find out whether there were others.

Judge Soper: He mentioned two.

Mr. Gravatt: What I wanted to find out, are there any others?

Judge Soper: Ask him.

By Judge Soper:

Q. Are there any other lawyers, to your knowledge, that have been employed in these cases?

A. To my knowledge, there are no other lawyers that have been employed in these cases.

By Judge Hutcheson:

Q. You spoke of a lawyer in Fredericksburg, I forget his name, but you said, as I understood, that the Association paid only the cost of printing the brief. Did they pay him a fee also?

A. I don't recall whether they paid him a fee or not.

Q. I don't know whether it is too important, but I wanted [fol. 53] it cleared up. I understood you to say that they paid only the cost of printing the transcript.

A. I think I did say in the case of Fredericksburg that I remember distinctly that the cost of the brief was involved. In the other instance, I said so far as Mr. Overton was concerned, we paid some fees in that particular case.

Q. And in that case he was associated with one of the members of the Legal Staff?

A. That is correct.

Q. And was so compensated?

A. That is right.

By Mr. Gravatt:

Q. So I understand that you have a resolution of your State Conference fixing the fees that ought to be paid attorneys?

A. Yes, there is a resolution that fixes the per diem fees to pay attorneys.

Q. Does that resolution provide as to what attorneys those fees will be paid to and upon whose approval?

A. That resolution, as I recall it, does not specify any attorney.

Q. Do you have resolutions which do specify what attorneys under the State Conference Branch will be paid?

A. I don't recall that the Conference itself has such a [fol. 54] resolution.

Q. Will you file a copy of the resolution fixing the fees and any other resolution of the State Conference which bear upon the general factors within the Conference for the employment and the compensation of the attorneys by the State Conference of Branches, please, sir.

Mr. Gravatt: With the Court's consent.

Judge Soper: Very well.

By Mr. Gravatt:

Q. (Continuing) Will you get those resolutions for us, please, sir, and file them as a part of your evidence in this case.

A. I will be glad to.

Q. Now, Mr. Banks, I want to ask you another question. You mentioned that you were in charge of soliciting funds and memberships as a State Coordinator and that a large part of your work has to do with going about to the various branches and putting on campaigns for that purpose; is that correct?

A. That's correct.

Q. Who are the people, within each branch who are authorized to solicit funds?

A. The persons in a branch area that are authorized to solicit funds are those individuals who are actual members of the Association, more specifically those individuals who [fol. 55] serve as members of the Membership Committee. But anyone who is a member of the Association can solicit funds in a particular campaign.

Q. Any person who is a member may solicit funds from any other person whom he wishes to solicit from; is that right? That is, any member of your Association?

A. I think he would have the prerogative to do so.

Q. Do you have any way whatever to control or check upon what funds those persons collect and what they do with them?

A. The campaign—yes, we do have. Let me say this, Mr. Gravatt. A campaign is being conducted in Nottoway County. The branch itself, in preparation of conducting the campaign, would appoint a membership committee or a campaign committee. Those individuals would be charged with the rest of the branch personnel in actually spearheading the campaign in conducting the membership campaign. The individual who goes out and solicits members—while as an individual, I would have no way of knowing whether or not that individual solicited your membership, shall we say, but when those memberships are reported, first they are reported to the local Membership Committee by the solicitors, and the committee in turn reports them to the branch, the branch section processes the membership lists, that particular list is transmitted to the national office [fol. 56] with the national office's share of the membership money, and then after a reasonable time the membership cards come back to the individual members.

Now if the check is incorrect, because I have solicited your membership—if you will please pardon the personal reference—it wouldn't be long, if you were interested in the objectives of the Association—it wouldn't be long if you did not receive your membership card, say within five or six weeks, until you would make inquiry as to what happened to your membership. If I solicited your membership directly, it seems to me your first inquiry would be made

to me, or it might be made to a branch officer. The inquiry might, if it is not satisfied, go to the national office. So that is a check on the solicitation.

Q. So that you depend upon whoever the person may be that paid a membership to get excited because he didn't get a membership card and find out what became of his money? That is, the person that has been solicited. You have no internal check at all on what money is received or what is done with it so far as the man that gets it in his hand the first time is concerned?

A. It seems as though the question you are asking now is a little different from the first question that you asked.

Q. Well, I am asking you now if you have any check [fol. 57] on the money received by the person who solicits it.

A. The person who solicits the membership, as we said before, is either a member of the Membership Committee or a member of the branch. It is assumed, and we have certainly implicit confidence in the membership of the Membership Committee and of our branches, that they would not solicit the memberships for their own personal gain. We have certainly the same check as a membership organization, I should think, in soliciting memberships as with the Red Cross, or the Heart Association, or the Cancer Association, or any other membership association.

Q. When you come to contributions that are not membership fees that are paid to these solicitors, do you have, or does the public have, any way of knowing whether that money is properly applied or not?

A. Yes, the public—

Judge Soper: The public?

Mr. Gravatt: Yes, sir. I am talking about the public who might contribute, I am not talking about just the curious public.

Judge Soper: Hasn't it got to do with the same thing as any other organization which collects money? Haven't they got to take some chance on the people who collect? You don't send somebody along with an auditor and a secretary and watch every solicitor.

[fol. 58] Mr. Gravatt: I am not trying to tell you that, sir.

Judge Soper: I am trying to suggest to you that the witness has answered your question. If you have something else that he hasn't covered, let's get to it.

By Mr. Gravatt:

Q. Is there any check of contributions made by individuals of people who solicit funds for your organization?

A. Yes, there are checks that are made. For example, if I may give you an example, in the Shiloh Baptist Church, and again I am talking about Nottoway County—in the Shiloh Baptist Church, the congregation on a particular Sunday makes a contribution for the Freedom Fund. That particular contribution might be \$50, let us say. That contribution then would be given to a representative of the branch. The branch, in turn, would subsequently make that contribution to the NAACP proper. The Shiloh Baptist Church itself would receive acknowledgment that a contribution of \$50 has been received, so that the persons in the congregation on that particular Sunday would have knowledge that the money had reached the proper source.

Mr. Gravatt: That is all.

By Judge Hutcheson:

Q. Am I correct in understanding that you testified that [fol. 59] among the duties of the members of the Legal Aid Staff are the attendance at meetings of the local branches?

A. No, sir. If I testified to that, I didn't intend to imply that.

Q. What was it that you said about their attendance of meetings of local branches?

A. I intended to convey, sir, that I, as Executive Secretary, attend meetings of the local branch. I believe it was during the discussion where I said that in some instances individuals bring complaints direct to me and other instances I go to the local branch and investigate the complaint. When it is determined that there is a legal question involved, then the complainant is referred to a member of the Staff.

Q. So I misunderstood you when I thought you said that the members of the Legal Staff attended meetings of local branches?

A. If I said that, I think you did, sir. But it is quite possible that a member of the Legal Staff would attend a local branch meeting. That certainly has happened in many instances. He might be a speaker.

Q. A speaker?

A. Yes, sir.

Q. In his capacity as counsel for the Association?

A. It is possible that a member of the Legal Staff might [fol. 60] attend a local branch meeting in his capacity as counsel for the Association.

Q. Is he compensated for that as counsel?

A. As counsel, he would be compensated for travel expense only, and that usually would be taken care of by the local branch in question, if not by the State Conference.

Q. And he would be a speaker on any particular subject specified?

A. Oh, I don't know what he might speak on. I imagine that would be—it would depend on the occasion, I suspect.

Q. But would his attendance be determined by the Committee?

A. No, sir, I don't think so. I would think if Branch X wanted to engage or to have as their speaker Mr. Hill, they would either contact Mr. Hill directly or they might contact Mr. Hill through me, saying that we would like for Mr. Hill to speak on such and such an occasion.

Judge Soper: Any further questions?

Mr. Carter: I have nothing further.

Call Mr. Wilkins.

[fol. 61] ROY WILKINS, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Would you give your name for the Court's benefit.

A. My name is Roy Wilkins, sir.

Q. Where do you live?

A. I live at 147-15 Village Road, Jamaica, New York.

Q. What job are you presently holding?

A. Executive Secretary of the National Association for the Advancement of Colored People.

Q. How long have you held that job?

A. Since April, 1955.

Q. What job or jobs, if any, did you hold in the Association prior to being Executive Secretary?

A. Oh, I was Assistant Secretary and I was Administrator, and also in combination with the assistant secretaryship I was editor of The Crisis Magazine.

Q. How long have you been connected in an official capacity with the Association?

A. Since 1931.

Q. Would you describe your duties as Executive Secretary, please.

A. Well, the duties are, of course, of a general administrative nature, supervising the whole work of the Association [fol. 62] tion, its program, staff, and of the carrying out of the policy as laid down by the Convention and the Board of Directors.

Q. When was the Association organized, Mr. Wilkins?

A. The Association was organized in 1909 and incorporated some time thereafter, I don't have the date.

Q. You do know that it is a corporation.

A. It is a corporation.

Q. This is Plaintiffs' Exhibit No. 1. Would you identify it.

A. This is a copy of the Articles of Incorporation, Certificate of Incorporation. The date on it is May 25, 1911. [fol. 63] Q. Would you read into the record, sir, the aims and purposes as set forth in the Articles of incorporation of the Association.

Judge Soper: Isn't that part of the record already as an exhibit?

Mr. Carter: Yes, sir.

Judge Soper: Do we need to read it at this time?

OFFERS IN EVIDENCE

Mr. Carter: No, sir. I would like to offer this in evidence.

Judge Soper: Very well. Give it to the Stenographer and let him mark it, or to the Clerk.

(The document referred to, marked Plaintiff's Exhibit No. 1, was filed in evidence.)

By Mr. Carter:

Q. I want to show you two other documents, Mr. Wilkins. I show you a document marked "Constitution of the National Association for the Advancement of Colored People." Will you identify it and indicate whether it is the latest document?

A. Yes, sir; this is the constitution of the corporation. This is the current one. It says "Amended June 1955," and an article on an action of the Board on May 13, 1957. This is the latest copy.

[fol. 64] Mr. Carter: I would like to offer this, too.

Judge Soper: Very well.

(The last-mentioned document, marked Plaintiff's Exhibit No. 2, was filed in evidence.)

Q. I show you a document, "Constitution and By-Laws of the Branches of the Association," and would you please identify it and indicate whether this is the current constitution and by-laws?

Judge Soper: Of branches?

Mr. Carter: Of branches, yes, sir.

A. This is the current constitution and by-laws for branches. It is dated March 1956.

Mr. Carter: I would like to offer this in evidence.

(The last-mentioned document, marked Plaintiff's Exhibit No. 3, was filed in evidence.)

Q. Now, what is the organizational structure of the Association plaintiff corporation?

A. You mean how it is organized?

Q. Yes, sir.

A. Well, it functions through a board of directors—a convention, really, at the beginning. A convention of delegates [fol. 65] gates of the branches meets annually and adopts resolutions which become the policy of the body for the ensuing year. The board of directors carries out this policy and adds to it or amplifies in accordance with the provisions of the constitution, and underneath the board of directors there functions a staff, an administration staff headed by the executive secretary (a salaried administrative staff) and these staff members preside over the functioning of the local branches throughout the country and the state conferences of branches. The officers of the corporation, non-salaried, fit in beneath the board of directors and above the staff, that is, the president, the treasurer, and assistant treasurer, the vice-chairman and chairman of the board, who are officers of the corporation who are non-salaried.

Q. How many members of the board of directors are there?

A. Forty-eight.

Q. How are they elected?

A. They are elected through a process—they are elected by the branch. Do you want me to go into detail?

Q. Well, just generally.

A. It is not a self-perpetuating board; it cannot elect its own members. They are elected by ballot conducted in the branches themselves.

[fol. 66] Q. How many are elected each year?

A. One-third each year.

Q. Are the board members paid any compensation for their services?

A. No compensation to board members.

Q. Are they paid any compensation at all?

A. A small contribution is paid through traveling expenses at the time they attend the board meeting, if they attend it. That is, sir, there is no blanket sum set aside for that.

Q. How often does the board meet?

A. The board meets eleven times a year.

Q. Where does it meet?

A. It meets in the national headquarters in New York City, except for a meeting which is held during the annual convention, in whatever city that might happen to be.

Q. Where is the principal office of the New York corporation?

A. At 20 West 40th Street, New York City.

Q. Other than at that office, does it have any salaried employees at any other offices? Does it maintain any offices other than there, I should ask?

A. Yes; we have an office in San Francisco.

Q. Any place else?

[fol. 67] A. We have an office in Washington.

Q. Any place else?

A. We have an office in Dallas. These offices are maintained by the corporation. San Francisco, Dallas, Atlanta, Washington.

Q. In those offices outside of New York, does the corporation have salaried employees?

A. We do.

Q. Has the corporation any local affiliates or units, and if so, describe them.

A. Its branches?

Q. Yes.

A. The branches of the association are unincorporated units which exist and have been organized in forty-three or forty-four states and the District of Columbia and the territory of Alaska. They number roughly, varying, of course, around a thousand units—branches, we call them officially.

Q. Are there any other units of the corporation?

A. Well, we have also state conferences of branches, and these exist in a number of states in which they get together and organize them.

Q. Well, let us take a branch, Mr. Wilkins. How does a branch come into being?

A. A branch is organized usually by a group of persons in a community, feeling that a unit of the association [fol. 68] would be useful and helpful, and they write and make application to form a branch. They send for a blank and the required information, and they enlist or enroll the minimum number required for a branch and then

send in those names and addresses in a formal application for a charter. This is the way a branch comes into being.

Q. How does one become a member of the NAACP?

A. Oh, by paying dues—paying dues.

Q. Is this your sole source of income?

A. No, it is not our sole source of income, but it is the principal source of income.

Q. What are the other sources of income?

A. Well, the other sources are contributions of varying kinds, outright contributions; some of them are benefits—the usual methods by which voluntary organizations are supported.

Q. Well, are there any units or affiliates of the New York corporation in Virginia, and if so, what are they?

A. Oh, yes, we have a State Conference of Branches in Virginia—Virginia State Conference of Branches, and I am not certain of the number, but a number of branches throughout the state.

By Judge Soper:

Q. What are the membership dues, Mr. Wilkins?

A. The minimum membership dues are \$2 a year and [fol. 69] they run all the way up to practically any amount anyone wants to give as a membership, but the highest membership is that of a life member, of \$500.

By Judge Hoffman:

Q. Is that \$2 a year for the national organization as such, or is that divided between the conference branches?

A. It is divided. The \$2-minimum membership, we call it, is divided fifty-fifty; one dollar stays in the local chapter that solicits the membership and one dollar is required to be sent to the national office.

By Judge Soper:

Q. How are the expenses of the State Conference paid?

A. The State Conference expenses are paid, some of them, through an arrangement between the State Conference and the branches in the state and the national office.

The usual method, Judge, is to have the branches in the state agree to pay an amount of money out of their share of the membership, and they send that to New York along with their report of membership. For example, on a \$2-membership, instead of sending us one dollar, they will send us \$1.00 and we in New York will add 10 cents to their 10 cents and mail back to the Conference the 20 cents per member in that state. Perhaps I ought to say for the sake of Virginia, which is a little different, Virginia pays more [fol. 70] than the 10 cents to us. The branches in the state are free to tax themselves as they see fit and it happens that Virginia, I think, pays the highest proportion of its—we do not match it in the total; we only agree to match a dime of it, but Virginia pays more.

By Mr. Carter:

Q. For the upkeep of the State Conference?

A. For the upkeep of the State Conference, yes, sir.

Q. What kind of activities, Mr. Wilkins, does the Association engage in? What does it do?

A. Well, our program generally is to get rid of—a short way to say it—to get rid of second-class citizenship, but it is to erase segregation and discrimination on account of race and color. We have numerous activities under this general heading and we proceed generally under three broad types of activity. We have processes in the courts, legal activity, and we have what might be designated as legislative activity, and finally, under the broad heading of educational work—lectures and writings and publications and speeches and types of persuasion on the public to accept our cause.

Q. Would you describe in more detail what you mean by the first category, legal activity and legislative activity?

A. Well, under legal activity we have sought to assist [fol. 71] in securing the constitutional rights of citizens which may have been impaired or infringed upon or denied. We have offered assistance in the securing of such rights. Where there has been apparently a denial of those rights, we have offered assistance to go to court and establish under the Constitution or under the federal laws or accord-

ing to the federal processes, to seek the restoration of those rights to an aggrieved party.

Under legislative activity, we have sought the enactment of laws which would do away with racial discrimination and segregation and which would enlarge the opportunities of minority group citizens which hitherto had been restricted because of their race or color, and we have sought the repeal of laws which we felt were denying constitutional equality, and we have campaigned and carried on educational ventures designed to build the public opinion which would result in these objectives through the legislative process.

Q. Well, Mr. Wilkins, can you give examples of various activities that you feel would fall into any of these categories that the association is now engaged in specifically?

A. Well, at the present time, for example, under the matter of legislation, we have just finished on the national level a campaign for the enactment of a civil rights bill [fol. 72] in the Congress.

In New York State at the present time, on the state level, we are at work in an effort to secure the strengthening of state legislation having to do with migratory farm labor and the conditions under which they live and work—application of the minimum wage laws to them, the application of certain sanitary statutes and housing statutes, and also the application of the state school attendance to them, and that sort of thing. This is a current activity in New York State on the state level.

On the local level, we have a great variety of items: one, the effort by local chapters to secure the enactment of fair employment practice ordinances of city councilmen.

On a state level of a different kind, in California—I think our state organization in California is not supporting a suit in the federal courts in the matter of housing, discrimination in housing.

I do not recall offhand all the different types of local activity.

By Judge Soper:

Q. Does it have anything to do with places of amusement?

A. Yes, Judge, here and there, there is activity on the

part of the local chapters with respect to admission to [fol. 73] roller skating rinks and theatres and other places of amusement. This usually takes place under existing state civil rights laws. Some local chapters concern themselves with golf links and the use of municipal golf courses, but the golf business—I don't think we have concerned ourselves as an organization—or let me put it this way: We have considered that there are some other matters of more pressing concern than using our energies on the golf courses, although we have not discouraged any private citizens from bringing suits on these golf courses.

Q. And you have been interested in park cases?

A. Park cases, yes, sir, especially the state parks.

Q. How about hotels and restaurants?

A. We can only move against hotels and restaurants in the courts when there is a state statute which presumably guarantees equal treatment, or, of course, we could move in the original instance where some citizen wanted to sue on the ground that he was entitled to enjoy these.

By Mr. Carter:

Q. How is the program and policy of the Association carried on in Virginia?

A. Well, we don't differ in the program in Virginia from any other state. We carry on here and have carried on local activities in the state of Virginia. We have done [fol. 74] some, or have attempted to do some legislative work; we have done educational work—lectures—and we have done of course fund raising. I did not mention fund raising when you asked me about activities, because I did not conceive of that as programmatical. Fund raising has been carried on at all times, but it is an activity and, of course, we have it in Virginia.

Q. Are these activities of the organization as carried on in Virginia, carried on by employees from the New York corporation, or are they carried on by branches and members in Virginia? Or just how do you function in this state?

A. We don't have any employees of the New York corporation in Virginia. We have no staff of the national

corporation here in this state as we do, for example, in North Carolina, but we don't have in Virginia. The work in Virginia is carried on by the branches in Virginia, by the State Conference of Branches in Virginia, with the advice and consultation of national officers if they call them in.

Q. Well, on the question, then, of fund-raising, Mr. Wilkins, does your corporation get any funds from branches, State Conference members, and contributors in Virginia?

A. Oh, yes, we get money from Virginia, and various [fol. 75] other sums.

Q. Do you know the total of the funds that were received by the New York corporation from Virginia?

A. I had those figures looked up for me by our accountant. We did receive a sum for the first eight months, I believe, the figure was made up for.

Q. Do you have those figures?

A. I do not have them.

Q. Do you have them there?

(A brief case was handed the witness.)

A. Now, the question was—I'm sorry.

Q. How much money the corporation received from sources in Virginia in 1957, and give me the dates and the latest figure that you have.

A. I have here a figure from our accountant for January 1, 1957, through August 31, 1957, and the total given for that period is \$37,470.60.

Q. Do you have any figure for a similar period in 1956?

A. No, I do not have a similar period. I have a figure for the entire year of 1956.

Q. What is that?

A. \$49,996.44.

Q. Do you have a figure for 1955?

[fol. 76] A. I have one for the entire year. It is \$39,435.56.

Q. Do you have the figures, Mr. Wilkins, with respect to membership in the NAACP?

A. You mean the individual members, total membership?

Q. Yes. Would you give us those figures for the current year and back as far as you have them?

A. I have a figure for January 1, 1957, through August 23, 1957, and the total for the state is 13,595 members. Now, for the same period in 1956, which is roughly eight months, the membership total was 19,436, and for the same period in 1955, that is, the first eight months, it was 16,130, and for the same period in 1954, again the first eight months, it was 13,583.

Q. Now, Mr. Wilkins, are you familiar with Chapters 31, 32, 33, 35, and 36, the laws that are involved in this litigation?

A. Well, sir, I can't say that I am familiar with them. I know about them.

Q. You know in general—

A. In general, the language, yes.

Q. You know in general what is required by these various provisions, do you not? Let us take Chapter 31, which requires an organization that solicits funds for litigation [fol. 77] to list its contributors, its members, and sources of income, et cetera. What burden, if any, would be placed upon the Association by being required to comply with that statute?

A. Oh, to list all the members and contributors, also sources—oh, well, I have just quoted here that we have 13,595 members in the state for 1957 up through August. The listing of 13,595 names and addresses, we would have to have a staff to take care of the clerical work for Virginia alone, besides the burden it would force upon the organization from the branch level on up. These names do not come in all at once. It is not possible to say that this is a job that could be done in two weeks in July, two weeks in April, or two weeks in October. This would be a burden, that one item alone.

[fol. 78] Q. Are there any other burdens that your office would have in being required to comply with this law?

A. These lists, as I understand the law, would have to be made periodically to either the Secretary of State or to a designated official of the State of Virginia. All of this clerical work and recording would place a burden on our Association which I would say should be obvious would hamper its efficiency as a functioning organization in carrying out its main purposes.

Q. The laws that forbid an organization such as the plaintiff corporation to aid in litigation, what burden would that place upon your activities by your compliance with it?

Judge Soper: I don't think I caught that question.

By Mr. Carter:

Q. (Continuing) The statutes forbidding the corporation from aiding in litigation, giving financial assistance in litigation, would that place any burden upon your activities?

A. Well, this statute could very well wipe out—

Mr. Mays: May I inquire what statute is now mentioned?

Mr. Carter: We are talking now about Chapter 31—the effect of Chapters 33, 35 and 36, sir.

[fol. 79] A. This would seriously impair the work of our Association and its support by the general public. Since one of our three major lines of activities is seeking legal redress of grievances, if we were debarred from assisting in any way a citizen in establishing his constitutional rights, either prevented from offering him legal assistance or from contributing to the costs of a legal action, this would impair an important one-third of the activities of the Association. As a matter of fact, it would impair the establishment and protection of these rights, since that is one of our main pieces of business.

Mr. Carter: Your witness.

Cross examination.

By Mr. Mays:

Q. Mr. Wilkins, I understand that through the 31st of August of this year, you had collected in Virginia something over \$37,400, 13,595 memberships being involved. That is \$1 apiece on membership, isn't it?

A. Well, it would be—no, that is 16,000 members, roundly speaking, and \$37,000. If it were \$1 apiece—or do you mean \$2 apiece?

Q. What I am getting at is a substantial amount of this money coming from contributions over and above the membership fees? Isn't that correct?

[fol. 80] A. I am not sure that I could agree that a substantial amount—certainly our income is composed of memberships and other funds. How much of this is membership money and how much is not—because membership money, when I discussed it, I was discussing the minimum membership only, the \$2. There are other categories of memberships, \$2.50, \$3, \$5, and \$25 on which the division of money is not on a 50-50 basis, and therefore it would come to the New York office as membership money. So that as a general yardstick, you take the \$2 business, but it doesn't work out that way.

Q. Well, these contributions by way of membership or otherwise come in continuously all during the year, do they not?

A. Well, not continuously. We are open for business all during the year and would like to see them come in continuously, but they come in in certain times of the year, depending on when the local branches decide is the best time to conduct their membership campaign.

Q. Ordinarily, what time of year are the majority of those meetings held?

A. Well, the vast—not the vast majority, but the majority of them are held between February and July 4.

Judge Soper: Speaking of Virginia now?

Mr. Mays: Yes, I am speaking of Virginia.

[fol. 81] A. (Continuing) Well, now, Virginia I am not able to say that is so, although I suspect it is because that is the national trend. We do have a substantial minority of branches conducting their membership campaigns in the fall, September, October, and November. But I would say that 60 percent at least conduct theirs between February and July 4.

By Mr. Mays:

Q. Do you know, of your own knowledge, Mr. Wilkins, whether or not the Association contributes any funds to in-

dividual litigants or does your Association contribute any funds at all?

A. You mean to give money to—

Q. Individual litigants.

A. Individual litigants or plaintiffs for their own use?

Q. No, his own use in connection with litigation.

A. We don't give money to individual litigants.

Q. That would come only from the Fund? That would come only from the other Association Fund?

Judge Soper: You mean from the local association, Mr. Mays?

Mr. Mays: Yes, sir.

A. I am sorry, but I don't believe our local associations, our local chapters, give money to individual plaintiffs. When I spoke of assisting them, I meant that we would [fol. 82] either offer them a lawyer to handle their case or to help to handle their case and pay that lawyer ourselves, or we would advise them, if they had their own lawyer, would advise with them or assist in the costs of the case. I didn't mean to imply, and I hope to make clear now—we do not make payment to individual litigants or plaintiffs under any pretext whatsoever. Even if he says, "The record in this case will cost me \$1200. Will you give me the \$1200?" We never do that.

By Judge Soper:

Q. What do you do? You pay the bill?

A. Judge, if our lawyers, or Board of Directors, or if the local branch in its Legal Redress Committee, have previously decided that this is a worthy case and a case that comes within our activity, then we will offer to assist with the costs. And the dealings are never, however, done with the plaintiff or the litigant. No money passes to him. That is, insofar as I know, and I have handled a great deal of this.

By Mr. Mays:

Q. Does your Association, at any time, act as agent for attorneys in solicitation of lawsuits?

A. As an agent for attorneys?

Q. Yes, or in any capacity.

A. No. I am not a lawyer, so I don't know the exact [fol. 83] legal connotation of these words. But if I understand "agent" correctly, it would mean that Law Firm A or Law Firm B, or Lawyer A or Lawyer B, would have a working understanding or relationship with our Association that in certain circumstances and certain types of cases we would call him in or refer this case to him or employ him to handle this kind of a case. Is that what you mean by "agent"?

Q. That is right.

A. We do not act in that capacity.

Q. Does your Association, as far as you know, ever decide upon bringing some particular piece of litigation and then go seeking for a plaintiff in order to get into court?

A. I can do better with seeking for a plaintiff than I could with agent.

Q. I hoped you could.

A. We do not go out into the general population and solicit a man by saying, "Don't you want to challenge such and such a law?" or "Don't you want to go to court on this or that point?" I think it is fair, however, and it is a matter of record, that we have said publicly, on many occasions, that such and such a law we believed to be unconstitutional and unfair and we believe that Negro citizens are deprived of their rights by this statute, or this practice, and that we believe it ought to be challenged in [fol. 84] the courts, which is the proper place to challenge such legislation, and that we urge colored people to challenge these laws and that if any one of them steps forward and says he wishes to challenge such a law, we will agree to assist him, providing the case passes all of the requirements. But for actually going out and buttonholing people and saying, "Will you come in and help us test this?" we don't do that either.

Q. Let's see just how we do it. You will have a public meeting and advertise it, will you not, to get as large an attendance as possible?

A. Well—

Q. Then you state to the people who are gathered there, do you not, that there are certain laws or a law which is violative of their rights and you feel it should be tested in the courts; you do that, do you?

A. Well, let me say this—

Q. Will you just answer that yes or no and then explain?

Judge Soper: What was the final question?

Mr. Mays: I will ask the Reporter to read it.

(The following was read:

"Then you state to the people who are gathered there, do you not, that there are certain laws or a law which is violative of their rights and you feel it should be tested [fol. 85] in the courts; you do that, do you?"

A. I will answer yes and then I will—in answer to the other hypothetical questions prior to this one, I did not, and do not, concede that we ever called a meeting for the purpose of outlining an unconstitutional law and inviting the people at that meeting, as the business of that meeting, either the sole or principal business, to challenge this law. The way it works out is that in the general membership meetings that we will have, or monthly mass meetings that will be held, in which a number of topics may be discussed in the general front of battle against discrimination and segregation, a particular statute or a particular situation may come into the discussion, the meeting not being called for that purpose, and not being called for the purpose of trying to encourage a given number of persons who might have attended the meeting to enlist for the challenge of that particular law. It is only a part of the general business of the Association and it might emerge from such meetings, but the meetings themselves are never called for that purpose.

Q. Is it not true that the subject of bringing up suits of that sort is on the agenda of the meeting at the time it is called?

A. No, I am sorry, I don't know of any meeting whose [fol. 86] agenda I have seen or participated in where they have ever had on the agenda the matter of getting plaintiffs for challenging certain laws.

Q. Isn't it true that at these meetings from time to time papers already prepared are submitted to people to be signed authorizing someone to act for them in bringing suits? Aren't those papers prepared and submitted at those meetings and haven't people been urged to sign them, whatever they may be?

A. As a regular course of business, I would say no. I do not say that this has not happened on certain occasions, under certain circumstances, and with reference to certain particular actions of the moment. But as a matter of course of business, year in and year out, month in and month out, as a part of the occasional or regular agenda, no.

Q. What instances come to your mind in what I have described that took place?

A. Well, I don't know that—I don't know that we are at one on your description of the situation, but it occurs to me that after the Supreme Court decision on school desegregation cases, a great many parents were wondering how to proceed under the new statute, the new opinion of the Court, and they were at a loss as to the proper steps to take. They did seek advice from us as to what to do. [fol. 87] This, I do not have to emphasize for this Court, that is a matter of great moment to many persons, parents, children, everywhere, and they did come to us and say, "What do you advise us to do?" "How can we proceed?" "The Supreme Court has said there shall be no more racial segregation, the Supreme Court has said that I can go to the school I want to, how can I go to this school?"

We did prepare information for them on that occasion, the precise nature of which I don't know. I am not a lawyer, but I know we did offer as much advice and as much assistance as we could to parents who were genuinely in the dark as to how to go about taking advantage of this new freedom which the Supreme Court had declared for them. This, as a matter of fact, is one of the best illustrations of our functioning as an organization, this kind of a crisis, this kind of seeking for information and advice.

Q. As a matter of fact, wasn't it true, or do you know whether it be true or not, that in Prince Edward County, Virginia, that such a public meeting was held and papers were prepared and people were invited to sign them so

they would be plaintiffs in litigation that the NAACP meant to bring, the very litigation that was altered in the decision which you referred to in the Supreme Court of the United States?

A. I know that such a meeting was held, in fact, there [fol. 88] were similar meetings held all over the country. The colored parents—and you will recall that the Supreme Court decision of 1954 was based on five consolidated cases, one from Kansas, Virginia, South Carolina, and so on, which fact indicates in itself that colored parents everywhere were concerned with this problem and were making an attack upon it. I do not deny, sir, that meetings of this kind were held in Kansas, and Virginia, and in other states which did not get their cases up in time to be consolidated. So I wouldn't doubt that this took place at all.

Q. You referred to your income in Virginia; how does that compare with your income in the country as a whole? Not in detail, but pick out any time this year or last.

A. I am sorry, I am not able to make a comparison because I do not have an accountant's figures for the income as a whole.

Judge Soper: In making the comparison between Virginia and the country as a whole, are you asking the question on the basis of the Negro population in this state?

Mr. Mays: No, sir, I was simply asking the amount of money.

Judge Soper: How much proportion of Virginia's population the whole revenue is?

Mr. Mays: That is right.

[fol. 89] By Judge Soper:

Q. You don't have the figure?

A. I do not have the over-all figure, but I will be very happy to get it, sir.

By Mr. Mays:

Q. You remember, do you not, certain litigation in Texas under the name of the State of Texas v. The National Association for the Advancement of Colored People?

A. Yes, I do.

Q. You testified in that, I believe?

A. I did.

Q. In Exhibit S-40, which was filed in that proceeding, it is indicated that for the year ending December 31, 1954, the total income for the NAACP was \$466,065.48; is that approximately correct?

A. I think so. I think that was taken from a certified public accountant's audit. That was for '54, did I understand you to say?

Q. That is correct. It was stated, in answer to defendant's interrogatories, that most of the attorneys for the plaintiff in the various segregation suits in Virginia simply work in cooperation with the Association in cases in which it is interested. Please tell the Court what you mean by the word "cooperation." Just how does it work?

A. I am sorry, in cooperation with the—I don't remember the interrogatory.

Q. We propounded some interrogatories.

A. Yes, I know you did.

Q. You indicated that most of the attorneys for the plaintiffs in the various segregation suits in Virginia simply worked in cooperation with the Association itself.

Mr. Carter: Mr. Mays, would you show Mr. Wilkins those interrogatories.

Mr. Mays: While we are looking for that, I will pass on, if Your Honor please.

Judge Soper: Yes, sir.

A. May I be permitted to go back to your question about the proportion of the income from Virginia?

By Mr. Mays:

Q. Yes.

A. You read from Texas testimony the total income for 1954 of \$466,000.

Q. That is what I get from the exhibit.

A. In partial indication of some answer to your question about proportion, I find here that the State of Virginia in 1954, our income from Virginia was \$13,050.33 as against the total income of \$466,000. But I will still get the figure you asked for '56 or—'56.

Q. I should like to have it as current as possible.

A. Very good.

[fol. 91] Q. There are a series of responses to interrogatories and I will read one by way of illustration. In answer to Interrogatory No. 71: "Victor Ash has worked in cooperation with the plaintiff corporation in cases in which it has been interested and he is a member of the Legal Committee of the Virginia State Conference of NAACP Branches."

Now I will ask you to state to the Court just how the attorney functions in these cases from the time he is employed on through and what direction he gets from NAACP himself.

A. He functions, as I understand this, and here again I am over in legal operations where I am not a lawyer and I only have—but as I understand Mr. Ash's function and all others similarly situated in the State of Virginia, they function primarily as for the Virginia State Conference of Branches. I believe it states there that they are members of the Legal Redress Committee of the State Conference of Branches. Now their chief functions under that aegis and the courts "in cooperation with," I assume covers consultation on tactics and procedure.

Q. Of course you signed the interrogatories so it is your word and I am merely trying to find out what you meant by that word. Now you have heard and I do not want to repeat it, some testimony by Mr. Banks on this [fol. 92] subject of how counsel are employed.

A. No, I didn't hear it, I was out of the room.

Mr. Mays: I am sorry, I thought he was present representing the corporation.

Judge Soper: He went out at your request.

Mr. Mays: Yes, sir. I didn't mean to preclude one representative of the corporation being present, but maybe they have someone doing that.

Judge Soper: Mr. Marshall is here.

Mr. Marshall: I am for one corporation, may it please the Court.

By Mr. Mays:

Q. Do you know just how the plaintiff employs lawyers or the Association employs lawyers for him when he has a grievance to present to the Court? I am speaking now of the State of Virginia, which I take it is the same as other states?

A. Well, state laws being what they are, they might not be identical in all states.

Q. Speak for Virginia, then.

A. I have no personal knowledge of the way that lawyers are employed in the State of Virginia. As I say, they are employed largely, if not completely, by the State Conference of Branches. We do not counsel with the State Conference of Branches on how they shall employ their [fol. 93] lawyers, except, of course, since our name is connected with the enterprise, we insist that all of these rules be on an ethical basis. But we have no—we don't lay down any rules and regulations for them, they employ their lawyers and—

[fol. 94] By Judge Soper:

Q. Does the Legal Staff resident in New York counsel with the Virginia lawyers in Virginia cases and advise and help them?

A. They do, sir.

By Mr. Mays:

Q. Do you have any knowledge of how the relationship is created between the plaintiff and the lawyer? Do you have any knowledge at all of how that is created?

A. Well, in describing the ways in which the corporation carries on its legal work, I attempted to indicate that where a plaintiff wishes to enter this litigation and comes to us and asks for assistance, that if he comes within our scope, we offer certain assistance. Now, since the Virginia State Conference operates as a part of us, as an auxiliary or affiliate, I assume that the same process comes into being, as you say, in this same way. The plaintiff or aggrieved citizen comes to the Virginia State Conference of Branches,

or his particular branch in his locality, and says, "It is thus and so with me and I want some help, I don't think it is fair." Let us say that the Petersburg branch will feel that maybe this question is too big for them to decide, but they feel it is a good one. They will then take it up with the Virginia State Conference of Branches and ask for its [fol. 95] advice or assistance or decision as to whether they go into the case, and I assume that the Virginia State Conference of Branches would rely on themselves and the Legal Redress Committee as to whether we should offer assistance in this Petersburg case. Very often the decision is not to offer assistance in the Petersburg case, or the Roanoke case.

Q. You assume and have used the word "assume" many times, but is that the limit of your ability to tell what actually takes place in Virginia?

A. I have no personal knowledge. I sit in on no conference of lawyers or plaintiffs in a case. If a plaintiff should come to me from Virginia, all the way up to New York, and say, "Mr. Wilkins, I have such-and-such a thing that has happened to our family and I think it is wrong and we want the Association to help us." I would say to him, "You consult the Virginia State Conference of Branches where you are and if they make a decision on the matter, then we will see if there is anything we can do to help," but as to the actual process in what goes on, I don't know.

Q. Well, the statement of your testimony, therefore, is that you insist on everything being ethical—that much we have here—but do you also insist, or does the Association insist that you take complete control of the litigation in event you finance it? Is that a policy?

[fol. 96] A. I don't understand what you mean by "complete control."

Q. Make the decisions, decide what to do, and run the case.

A. Well, I have heard our lawyers say many times that they cannot do anything that the plaintiff does not want done. I have heard them stop in the middle of a case, after they had reached a certain stage, and I have sat in on these conferences that took place on strategy, in which they

have said, "Well, before we can go further, we will have to find out what the plaintiff wants to do."

Q. Have you run into any instances where the plaintiff wanted to do something different from the lawyer?

A. I know of no such instance where the plaintiff has said, "You want to do this and I want to do that." Our lawyers have felt bound to do what the plaintiff wanted to do.

Q. I am asking you, have you known of any instance of disagreement between the plaintiff and the lawyer?

A. There might have been disagreement, but as far as I know, that disagreement was resolved, one way or the other, either from the plaintiff's point of view or from our point of view.

Q. You don't know of any case where the Association or the lawyer was in disagreement with the plaintiff as to [fol. 97] what should be done in a case?

A. I know of no such specific case.

Q. Will you explain to the Court, if you can, what the functioning of the Legal Committee in Virginia is—the Virginia State Conference?

A. Now, here again this is a matter of procedure within the State Conference. I have no intimate connection with the running of the State Conference.

Q. I will put it this way—I am not trying to explore your ignorance; I am merely trying to pursue the facts as to the things you do know, without wasting the Court's time, and I do not want you to give a lot of assumptions, unless the Court wants to hear it.

A. I don't know.

Judge Soper: I suppose he could tell you, if you want to know it, what the general practice is throughout the country.

Mr. Mays: That is quite another question.

Judge Soper: You don't want that?

Mr. Mays: I am coming to that.

By Mr. Mays:

Q. I am asking now the same question as to the country as a whole. How do you function in other states? Do you know about any of those?

A. The State Conference of Branches in other states has a Legal Redress Committee and this Legal Redress [fol. 98] Committee handles the details of arrangements between the plaintiffs in the case and the Association. That is the general procedure. I am not familiar with the details of the arrangements.

Q. Well, you would say, would you not, that your knowledge of how the Legal Committees work in the other states is no more than your knowledge of that in Virginia?

A. Probably so.

Q. What about the Legal Committee of the Association as a whole?

A. The Legal Committee of the Association as a whole functions, here again, or maybe it is a pattern, as the Legal Redress Committees of the State Conferences. They are to advise us on general legal procedure, to see that we do not exceed the bounds, to see that we do not take cases that are not germane to advancing the cause. I think, if it has not been said, that it will be said that we do not consider ourselves a general legal defense society. We do not attempt to function in behalf of every colored citizen in the United States who feels himself aggrieved in some way and wants some sort of legal redress, and our Legal Committees, national, state, and local, are for the purpose of advising our lay chapters and lay members and lay staff on proper legal procedure.

Q. I understand that Mr. Oliver Hill is the chairman of [fol. 99] the Legal Committee for Virginia; is that correct?

A. Yes, he is.

Q. And he is compensated, of course, for his services in that connection?

A. I believe Mr. Hill is—I believe Mr. Hill is.

Q. And he is also compensated for representing the plaintiffs in individual cases?

A. You mean his own individual law practice?

Q. No, but those cases that have the blessing of the NAACP.

A. Well, if he is employed in such cases, he is employed by the Virginia Conference of Branches, not by us.

Q. And would be paid directly by which?

A. If he is paid, he is not paid by us.

Q. But you don't know whether he is paid or not?

A. By them?

Q. Yes.

A. I do not know.

Q. Then, your answer would be the same as to Mr. Robinson?

Judge Soper: You are acting on the reasonable assumption that he guesses he does not work without getting something for it.

A. I only mention, Judge, I never saw any money pass or any letters of agreement and I assume he is paid by [fol. 100] the State Branches.

Mr. Mays: I will not pursue that, Your Honor, because I think we will find somebody yet who knows it.

Judge Soper: The man is in court if you want to get it.

Mr. Mays: Well, it is not our turn yet.

Q. Now, what is your connection, if any, with the Legal Defense Fund?

A. The separate corporation?

Q. Yes.

A. I have no connection with it.

Q. Have you ever had?

A. I have had a connection as assistant secretary.

Q. Over what period of time?

A. I am sorry, I can't give you exact figures; four, five, or six years.

Q. When did your relationship terminate?

A. Last year or the year before. It was a nominal connection.

Q. Well, you actually functioned, didn't you, as assistant secretary?

A. Oh, yes, but the assistant secretary is a more or less nominal office, not much—

[fol. 101] Q. Did you have any connection with the Legal Defense Fund except as assistant secretary?

A. None.

Q. Were you compensated for that?

A. Yes, I was.

Q. Do you remember how much?

A. Oh, \$3,600, or something like that.

Q. Well, you gave that up with some reluctance, didn't you?

A. Well, people don't give up \$3,600 these days enthusiastically.

Q. What was the occasion for your giving up that particular employment?

A. One of the reasons for giving it up was the fact that I had then become the executive secretary of the NAACP and my duties there were much heavier than they had been before and I felt that I could not give any time, no matter how nominal or how routine, to another activity, and that the executive secretaryship of the NAACP would demand my full time and such talents as I have.

Q. How long was the overlap timewise in those two functions?

A. Oh, eight, nine, or ten months maybe. There was a period of adjustment after Mr. Walter White's death there.

[fol. 102] Q. Did you resign as assistant secretary of the Legal Defense Fund voluntarily on your part, or was it suggested by somebody else?

A. Well, I am afraid this was sort of a cooperative effort. I felt very strongly about it because I had the duties on me and I felt I should resign, and the others felt that if I felt that way, that maybe I should resign.

Q. Was there any reason for your doing this besides the matter of the onus of your duties with the Association itself?

A. Yes, there was another reason—

Q. What was that?

A. And this was not a matter of sudden—it was deemed advisable, both from an administrative standpoint, which I have outlined—the overlapping of duties and the drain on the staff members—that the two staffs be separate. We have pursued that as a policy, separating the staffs.

Q. When was that policy adopted?

A. Oh, that was a policy agreed upon many years ago, that was carried out slowly.

Q. Can you state to the Court what was the largest single contribution made to your association during the last two years?

A. When you say "the Association," do you mean the [fol. 103] New York Corporation of the National Association for the Advancement of Colored People?

Q. Yes.

A. Well, sir, I can't recall the amount of the largest gifts of that corporation, I am sorry. I could look it up for you. It wasn't a huge amount, I am sure. You mean the largest individual contribution?

Q. Yes, in the last two years. What about Virginia? Do you remember that?

A. The largest contribution from Virginia?

Q. Yes.

A. Oh, we have received no substantial individual contributions from Virginia, and by "substantial," I mean not even, as I recall, as much as \$100 individually.

Q. In a given year?

A. From an individual in a given year. No, I don't believe it has amounted to that. And here again I will be glad to look it up. For the whole Association in the last two years, you want to know what is the largest contribution; is that right?

Q. Yes. I am not seeking the individual name of the donor, but I would like to know that.

A. I will be glad to give it to you, sir.

Q. When did your corporation register for the State Corporation Commission in Virginia? Do you recall?

[fol. 104] A. I think it was in 1955.

Q. Can you come any closer than that?

A. I am sorry, I cannot. The registration procedure was handled by our lawyers and I cannot recall the exact date.

Q. Handled by your local lawyers?

A. No, sir, handled by our New York lawyers. We were registering a Virginia corporation in Virginia.

Q. Had you had any reason for not registering in Virginia prior to that time?

A. No, we had not.

Q. Why did you do it at that particular time?

A. Well, Your Honor, since the Supreme Court decision of 1954, a number of the states affected by this ruling have suddenly called to our attention provisions of certain of their statutes which hitherto had never been applied

to our organization but which now suddenly loomed to be of great importance, and among these was a statute requiring the registration of corporations. Others, which may not interest this Court, were franchise taxes, and so forth and so on. And the pressures after 1954 on this Association, which was regarded as the leading proponent of the desegregation cause, caused us to seek to register to comply with the law, not that we had willfully and deliberately ignored the law theretofore, but no states [fol. 105] had called this to our attention, and maybe in some states we had been operating for as long as forty years and no mention had been made by any official of that state or any administration of that state of the necessity, or the fact that we were not complying. So we decided, sir, to try to comply with the laws so that we would to some degree free ourselves from the harassment and the attempted implication in the public Press and elsewhere, and statements that we were not conforming to state law and that we were proceeding illegally, and so forth, and for that reason, and that is the only reason—you say why did we do it at that date? We would have done it thirty years ago if it had been indicated any way to us the fact that, "You are not registered as a corporation," or any act of ours in the thirty years had so stirred the State of Virginia to say that, "You are violating the law by not being registered." So, in order to conform to the law, we registered.

Q. Now, what, if any, communication did you get from the Virginia Corporation Commission calling on you to register? Any?

A. I am sorry, here again the lawyers handled this. I do not recall whether there was a communication calling on us to register or not.

Q. Well, in any event, your narration fixes the time a [fol. 106] little nearer. Wasn't your registration before the Corporation Commission a short time before the bringing of this suit?

A. I said I thought it was in 1956. I may be mistaken; it may have been 1957. But we are proceeding to register in various states and I am not certain where Virginia comes in that list.

Q. I refer on that to some litigation in Texas, in which you testified some months back. I have a photostat of an exhibit that was marked S-22. This is a confidential memorandum and deals with the activities of a meeting held at 1:30 p. m., August 14 (it does not state the year) for the purpose of formalizing Texas State NAACP program for the immediate future. I ask you whether or not you are familiar with that confidential memorandum?

A. A confidential memorandum for whom from whom?

Q. It is the minutes of a meeting held on August 14. I ask you whether you have any familiarity with that memorandum.

Mr. Hill: May it please the Court, I think the witness at least ought to be advised, a meeting of what and whom.

Mr. Mays: Well, it is a NAACP meeting.

Judge Soper: It is rather vague, Mr. Mays.

[fol. 107] By Mr. Mays:

Q. It was held at the office of Mr. W. J. Durham, attended by Mr. Durham, A. Macio Smith, Dr. E. E. Ward, U. Simpson Tate, and Donald Jones. Have you any knowledge of such a meeting?

A. I have no idea what year it was.

Q. No, they don't give the year. Do you know of any meeting at all dealing with one J. H. Morton, who was seeking admission to the University of Texas?

A. I have no knowledge of that, sir.

Mr. Marshall: Your Honor—

Judge Soper: I guess he is through.

Mr. Mays: I have explored his lack of knowledge. I am through.

Judge Soper: If this is a good point to stop, Gentlemen, and is convenient, we will take a recess.

(Thereupon, a recess was taken until 2:15 p. m.)

[fol. 108]

AFTERNOON SESSION

Met pursuant to noon recess at 2:15 p. m.

ROY WILKINS, the witness on the stand at the noon recess resumed the stand and testified further as follows:

Cross-Examination (Continuing).

By Mr. Mays:

Q. Mr. Wilkins, with reference to the membership list about which you testified, do you carry that on sheets of paper in the form of Addressograph cards, or how is that handled?

A. We don't carry them on Addressograph cards, they are on sheets for such time as we have them.

Q. Don't you keep those sheets reasonably current?

A. Yes, within a year, I think. We don't attempt to keep them for very great back reference.

Q. You understood, didn't you, that you report only once a year to the Commission?

A. That is the provision of the law.

Q. Would it work any unusual hardship on you to attach a copy of the list that you have any way in your report to the Commission?

A. We would have to prepare such a copy because the [fol. 109] lists that we work with are not prepared by us.

Q. Are they prepared by some kind of transfer agent, or who does it?

A. The lists are sent in by the branches. That ends their connection with the business.

Q. Could you not send copies of those, either type-written copies or photostats of those lists as they come to the Commission where they would then be broken down geographically by the states? Could that be done reasonably easily?

A. I did not say that it could not be done. It could be. I said I estimated that it would place a burden upon us, and I am speaking here only of mechanical personnel burden, to furnish this information to the State of Virginia at any periodic time, or any other state. I did not deal

in the question, which dealt only with burden, of the other reason why this would be a great hardship upon us to furnish these names.

Q. I am talking about the mechanical difficulty now. That is not a major problem, is it?

A. Well, it is a problem, I would estimate, of some considerable proportion. Whether it could be classified as major or not, but it would add to personnel costs and it would add to payroll, and it might conceivably add and require additional office machinery.

[fol. 110] Q. Do you have a photostating machine in your office?

A. We have a machine which could do limited reproduction. I don't believe it is adequate or would be adequate to do the reproduction of 13,595 names.

Q. Well, they come on separate sheets. Can the photostat machine do any one of those sheets?

A. Oh, certainly.

Q. It can do any one of those, can it not?

A. Oh, certainly.

Q. They can be put together and sent to the Commission, can't they?

A. I didn't deny that they could do it, I merely said that they would impose an additional burden on the office and its equipment and personnel.

Q. You testified that you were assistant secretary of the Fund. Do you remember when you became assistant secretary of the Fund?

A. No, I honestly do not. I can't remember that.

Q. As far back as 1950, would you say?

A. I am sure I don't know. I do not recollect.

Q. Did you have any connection with the Fund before that?

A. No official connection.

Q. You were familiar with many of its affairs in that [fol. 111] earlier period, were you not?

A. Oh, yes, I knew about it and that it was there.

Q. Did you have anything to do at all with the Fund campaign called the Sweatt—S-w-e-a-t-t Victory Fund Campaign?

A. Not I.

Q. You know nothing about that at all?

A. I didn't say I didn't know anything about it. You asked me did I have anything to do with it.

Q. Yes.

A. No, I had nothing to do with it.

Q. Did you have any particular knowledge of what was going on in connection with raising the funds?

A. I understood that in the State of Texas some citizens there were raising a fund known as the—what is it? Sweatt?

Q. Sweatt Victory Fund.

A. —Sweatt Victory Fund. I had no connection with it and our office had no connection with it, made no contribution toward it, issued no literature in behalf of it, and made no solicitation in behalf of it.

Q. Do you know of anyone in your Fund office who had any connection with that solicitation?

A. No, I do not. It was my impression that it was a completely Texas operation.

[fol. 112] Q. You know nothing of any contract entered into with the Association or Conference of the Association with Sweatt?

A. No, I know of no contract entered into by Mr. Sweatt with our corporation. (sic)

Q. Do you know about any entered into between him and the State Conference of Texas?

A. I do not know of any contract.

Mr. Mays: No further questions.

By Mr. Gravatt:

Q. Mr. Wilkins, I would like to ask you one or two questions and I will try and be as brief as I can. Do you have any way that you can tell us, not who the members are, but where the members are, in the state? In other words, you said you had 13,000 and some members at the present time, or something to that effect. Could you tell us where in the state by your chapters or branches those memberships are located?

A. Well, sir, according to this tabulation we have members in some 73 localities in the State of Virginia.

Q. Could you file that memorandum with your testimony as an exhibit? I take it it is nothing except the name of a branch and the number of members?

A. This has the name of the branch and the number of [fol. 113] members as I detailed them this morning in the eight-month period of the various years. In our answer to this suit, Your Honor, I believe we were reluctant to give the names of the members.

Q. I do not want the names.

A. It seems to me that we did not refuse the names of the chapters.

Q. I do not want the names at all, if there is any question about it. The reason why I ask for it is because you are alleging economic reprisals and harassment of your memberships, and I think it would be relevant to that inquiry to know in what place you may have evidence of that and where your memberships are and the number, and so forth.

By Judge Soper:

Q. Can you start by giving the chapter location?

A. Yes.

Mr. Gravatt: I think he has a record there. If it shows the information which I would like to be filed—

Judge Soper: I should like to know where the chapter locations are, if you know.

A. (Continuing) Chapter locations are listed here, Judge Soper, such as Albemarle County, Alexandria, Amelia County, Amherst, and so forth, on down through Fauquier County, Floyd County, Franklin County, Fredericksburg, [fol. 114] Gloucester County, Halifax County, Lynchburg, Madison County, Nottoway County, Pittsylvania County, Richmond, Richmond County, Roanoke, Salem, Southampton County, South Norfolk, Spottsylvania County, Westmoreland County, West Point, and so forth.

By Judge Soper:

Q. Is it fair to say that the greater number of contributors reside in one or the other of those counties?

A. Well, Judge Soper, the membership set forth opposite each of the names will indicate the concentration of membership there.

Judge Soper: Is that what you want?

Mr. Gravatt: Yes, sir, that is what I would like to have.

Judge Soper: Is there any objection to that?

Mr. Hill: No, sir.

Judge Soper: Do you want him to file it?

Mr. Gravatt: Yes, sir, please, sir.

Judge Soper: All right, sir. File it.

(The document was received in evidence as Defendant's Exhibit 1.)

By Mr. Gravatt:

Q. Your testimony in regard to the income indicates [fol. 115] that during the first eight months of 1957 you have had an average income of approximately \$4,600 a month.

A. Well, the testimony was that the amount was \$37,470.60.

Q. For eight months?

A. For eight months.

Q. And that would be about \$4,600 a month, would it not?

A. Well, it would by simple division.

Q. An average of that?

A. Yes. It wouldn't come in that way, no, that is what I was trying to say.

Q. All right. And your testimony further was that for the year previous you had for twelve months an income of approximately \$49,900, which I believe is an average income of about \$4,200. That does not indicate to me a decrease in income. Does it indicate to you a decrease in income?

A. Indeed it does. Of course, you could do a lot of things, with figures, and you have taken a flat average here against a flat average and the assumption, using your

formula, would be that the average for the first eight months of 1957 would be maintained in the last four months. And I submit that we can make no such assumption. In fact, I know as a matter of fact that we cannot [fol. 116] make that assumption because the bulk of the money from branches is received, except in a very few cases, prior to September 1. The bulk of the income from branches. So that I would say, for example, that if you will note that the percentage of—I'm sorry—my formula would be a little different from yours and you are asking me why it would be less.

Q. That is right.

A. The increase in 1956 is something like 12½ percent and if we assume that the income for the last four months is about 12½ percent of the year's total for 1956—if you assume that the income for the last four months of 1957 would be at the rate of increase for 1956, namely 12½ percent, you will come up with a figure of \$41,000 as against \$49,000, if you project this on a percentage basis, which is a little better, at least in my opinion, than the flat average basis.

Q. Would you file with your testimony a statement showing the income for the first eight months of 1957 by the month and a statement showing the income for the year 1956 by the month?

A. I would be glad to do that.

Q. With whatever explanation you have, I believe.

Now, I understood you to testify that the State Conference in Virginia has guaranteed 20 cents for each membership, 10 cents from the local membership fee and 10 [fol. 117] cents from the National Association; is that correct?

A. Well, that is the general formula, but I think I explained that in Virginia—

Q. I know you did.

A. —it was a little different.

Q. That is the question I wanted to ask. You said that in Virginia that there was an additional assessment, or something, made by which the Virginia State Conference got more money than that. Could you tell us how much money the Virginia State Conference gets each year?

A. No, I'm sorry, I can't tell you how much money the Virginia State Conference gets each year. I was dealing only with the formula. This formula is arrived at by consent. The branches in the state say, "We will tax ourselves 10 cents and pay it to our State Conference for its support," and we say in the New York office, "If you vote to do this, we will add 10 cents to yours." Now, in Virginia they state cooperatively, "We will pay more than 10 cents as our share," and I think they pay 20 cents. I think they pay 20 cents and we add a dime, which makes 30 cents from the membership going into the treasury of the Virginia State Conference. It is on a voluntary basis.

[fol. 118] By Judge Soper:

Q. That is in addition to the one dollar?

A. Yes, indeed. You mean for the branch?

Q. I understood the dues were \$2, of which the Virginia Conference got one, and this 10 cents is in addition to that?

A. No, the Conference, Judge Soper, does not get the dollar; the local Branch gets the dollar, and then it is that it gives the dime.

By Mr. Gravatt:

Q. Does this money that goes to the Virginia State Conference pass through the national headquarters' office?

A. It does.

Q. And it goes through the office over which you have supervision?

A. It does.

Q. Do you have the records of, let us say, the last three years of the amount of money that has been paid in that way to the Virginia State Conference of Branches?

A. I can secure those figures for you.

Q. Will you file them, please, if I may ask? You will do that?

A. Oh, yes, I will be delighted to do so.

Q. What becomes of the money that is left in the local branch? Is that money expended purely upon the responsibility of the local branch itself?

A. Yes. You mean their share——

Q. Their 90 cents part of it that remains with them.

A. Yes. That 90 cents is 80 cents in the case of Virginia.

Q. They may dispose of that as they choose?

A. Only within the framework of the policies of the Association.

Q. What control does the National Association of the expenditure of funds, either by the State Conference of Branches or by the local branches for legal expenses and attorneys' fees?

A. Well, sir, we do not have any actual control in the sense that we are able to say, "You can do this and you cannot do that." Branches sometimes and State Conferences sometimes—you ask about legal—sometimes enter into agreements on a legal case with respect to the expenditure of funds, the payment of a fee, which if we had known about it in advance we might have suggested was excessive or unwise, or something of the sort, but once they enter into those agreements we cannot control them.

Q. You do not have any previous power of approval of the expenditure?

A. Well, I want to be accurate on this. We attempt to [fol. 120] consult. We have set up machinery suggesting strongly consultation on these matters so there will be some harmony between the New York corporation and the various branches. Most of the time the branches have consulted us; sometimes they don't, and in such cases they are committed to their obligations and there isn't anything we can do about it.

Q. Does your National Association, in addition to the money that may be contributed by the State Conference of Branches and the local branches to sustain litigation and attorneys' fees, also contribute money to that source in Virginia?

A. On occasion, I believe, we have. I am not certain, but as I think I testified this morning, we do offer assistance in certain cases and under certain circumstances in addition to what the local branch might offer, depending——

Q. Can you tell us what expenditures the National Association has made in Virginia paying attorneys' fees and

costs of litigation, by case, within the last two and a half years?

A. I don't think we have any in the last two and a half years. I think the Virginia State Conference of Branches has borne the costs of litigation of the type you mention. I don't think we have.

Q. Has the National Association made any contribution [fol. 121] to any litigation in Prince Edward County within the last three years?

A. I do not recall any contribution in Prince Edward County. It is my impression that the expenses were taken care of by the Virginia State Conference of Branches.

Q. Has the National Association made any contribution to legal expenses or attorneys' fees in Newport News within the last three years?

A. I do not know of any, sir.

Q. Or Norfolk?

A. Or Norfolk, I do not know of any.

Q. In Arlington?

A. Arlington, no, I do not know of any.

Q. What about Charlottesville?

A. Well, the same would go for Charlottesville. It is my impression that in the last two or three-years period you are asking information about, that the attorneys' fees and costs in these Virginia actions have been borne by the Virginia branches, working through the Virginia State Conference of Branches.

Q. Well, if there is a membership in Virginia of approximately 13,000 and you pay about 20 cents on one dollar for each of those memberships, which would be about \$2,500, I believe, is that all the money that you know of that the Virginia State Conference of Branches has had [fol. 122] available to finance this litigation?

A. Oh, no. They have other sources of income, just as the national corporation has other sources of income aside from membership money or per capita tax money.

Q. What other sources of income does the Virginia State Conference of Branches have?

A. Now, any State Conference of Branches is free to meet and devise ways of raising funds to carry on its operations, just as they devised this per capita tax. That is a general method.

By Judge Hutcheson:

Q. Is that income in addition to the 400-odd thousand dollars you referred to this morning?

A. The income of the Virginia State Conference of Branches?

Q. You made some reference this morning, if I remember correctly, to some \$460,000.

A. That was quoted to me from the Texas testimony.

By Mr. Gravatt:

Q. And that was in 1954?

A. Yes, roughly—income to the New York corporation only, that income which was raised and remained in the treasuries of the constituent affiliated bodies.

By Judge Hutcheson:

Q. You made reference to other sources of income be- [fol. 123] sides the membership dues. Did this amount that you made reference to include additional income, that is, in addition to the membership dues?

A. It included, sir, in the case of a State Conference, a tax which might be voted on a branch in addition to this 3900 per capita tax which would come in through the 10-center. The Virginia State Conference would get together in convention and say, "We have a budget of so-many dollars, we have only so-much coming in from the last per capita tax. How shall we meet it?" And they may have to pay a tax of 10, 15, 20, or 30 dollars per year.

Q. That would be no part of the income of the National Association?

A. Exactly so.

Judge Hutcheson: I see.

By Mr. Gravatt:

Q. And that would be an additional source of income that the State Branches would have?

A. An additional state per capita tax, but it would come from the same membership.

Q. Does the Virginia State Conference of Branches itself carry on solicitation of funds?

A. I am sure they do, because the Conference is simply

a cooperation of the branches and the branches carry on solicitation of funds for cases in which they are interested, [fol. 124] and if the State Conference of Virginia should deem a local action to be of statewide importance, or impact, or significance, even though it would be located in Prince Edward County, it would seem reasonable that they would solicit funds to carry on this litigation from elsewhere in Virginia than Prince Edward County.

Q. One other question. What is your last recollection of the National Association's expending money within the Commonwealth of Virginia in support of litigation, either as costs or attorneys' fees?

A. Well, sir, I have no recollection of any. I have no recollection of it. I do not handle those disbursements, I do not handle the legal matters in Virginia or elsewhere, but my recollection of general policy is, and of procedure in the last two or three years, which is the period—

Q. That is what I originally asked you.

A. Yes—that these matters have been taken care of by the Virginia State Conference of Branches. But that does not preclude, and I think my testimony this morning with Judge Soper, I specifically stated that the National Association, that is, the New York headquarters, does offer on occasion funds and legal fees. Now, whether they do it in Virginia or not, my strong recollection is that the Virginia Conference, which we regard as one of our strongest and [fol. 125] best organizations, looks after these expenses themselves.

Q. Who is the legal officer who has firsthand information on that subject?

A. Well, Mr. Carter is our general counsel here, and between Mr. Carter and our Legal Committee and our chief accountant, they would know the actual details.

Q. Who is your chief counsel?

A. Mr. Robert Carter is our general counsel.

Q. And Mr. Carter has been in litigation in Virginia during this period of time, has he not?

A. I believe he has—I am sure he has.

Q. And he was not paid by your National Association, he was paid by the local State Conference of Branches?

A. He was not paid at all by them. Mr. Carter is a

member of our staff and he is employed the year around. He was not paid to conduct the Virginia case or the New Mexico case, but to handle legal affairs for the National Association.

Q. And in that connection and as part of his duties as general counsel, his representation of these various Virginia plaintiffs falls within his duties in that respect as your general counsel?

A. It does. In my testimony this morning, I said we offer legal advice and assistance and counsel, and Mr. Carter is one of the commodities, if I may be so crude as to use that [fol. 126] word with respect to his high talents, is one of the commodities we offer.

Q. What other talent do you have that you offer in that way?

A. Mr. Carter is the only attorney on our paid staff of the National Association.

Q. Then, you have no other that you offer on an annual salary basis?

A. Not that the New York corporation offers on an annual salary basis.

Q. That is what I mean. And his representation in this case of these respective individual plaintiffs has been a part of his duties as your general counsel and he has been compensated in that way?

A. It has; that is right.

Q. And his employment and authority to represent these people came from the National Association and not from the local branches or from the various plaintiffs individually?

A. Oh, no. No, I'm sorry, I don't believe I could go along with that. His employment, or activity, or services in certain cases grew out of the requests either of the plaintiffs individually or the branches in the locality which had jurisdiction over the case or knew about the case or asked the national office for assistance on the case. As a [fol. 127] result of their request, Mr. Carter's services were offered. Now, it was not an independent commercial transaction. That is all I am trying to say. In the first instance, it was through a local contact and the local branch, their local counsel Virginia State Conference coun-

sel, was the only way Mr. Carter could be brought into a case.

[fol. 128] Q. You mentioned in your testimony there was a conflict between what Mr. Carter's clients in such litigation wanted done and what the National Association wanted done. What would be his position in the event of a conflict as to what should be done in a piece of litigation that he was handling in that relationship?

Judge Soper: Is it your idea to ascertain whether there has been a conflict? Haven't we got enough in this case to go into without going into a hypothesis? If there was a conflict, let's ask him.

Mr. Gravatt: Judge, I think there were conflicts in some cases.

Judge Soper: There may be. Let's ask him. Why ask him a question unless it is a real question.

By Mr. Gravatt:

Q. Do you know whether there have been any conflicts arisen where the litigant's policy and the policy of the National Association of Colored People through Mr. Carter?

A. I do not know of such conflicts.

Mr. Gravatt: I think that is all, sir.

Judge Soper: Any redirect?

Mr. Carter: No.

Judge Soper: Call another witness. These witnesses, I assume, may stay in the courtroom after they have testified [fol. 129] testified?

Mr. Carter: We talked with Mr. Mays and Mr. Gravatt about it and except for Mr. Wilkins, who is representing the Corporation, and Mr. Banks may be called on redirect, but I understand that other than that, the rest of the witnesses will be free.

Judge Soper: All right.

Mr. Mays: I am not sure, if Your Honors please, what is meant by the witnesses' being free. I think it was understood that so far as counsel were concerned we would be glad for the Court to excuse them after their testimony. As to Mr. Banks we would like for him to be excluded and

for Mr. Wilkins, we will be happy for him to stay representing the Corporation.

Mr. Carter: If Your Honors please, we haven't discussed this with counsel for the defendant. We find that we have reached the point where we had not anticipated and that was that Mr. Hill's testimony would be required. We think that we should call him and it is only fair—of course, we realize the defendant can call him, but we think it is only fair that he should be called by us. We wanted some guidance in terms of what the Court would have us do. We would be at a disadvantage—

Judge Soper: Do you want certain information from Mr. Hill? Would you like him to testify as to this this (sic) [fol. 130] information? He seems to have a position of some importance in this legal setup.

Mr. Mays: We will determine that as the trial progresses, Your Honor. I might say that if they wish to put him on they can do it with the same conditions as in the case of Mr. Marshall. We would not ask him to retire from the case, we would be happy for him to stay in.

Judge Soper: You can use your own judgment. You may call him now or wait until they call him.

Mr. Carter: We would prefer, I think, to call him ourselves.

Judge Soper: All right.

OLIVER W. HILL, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Mr. Hill, what position, if any, do you hold with respect to the Virginia Conference?

A. I am chairman of the Legal Committee, Legal Staff as it has been referred to.

By Judge Soper:

Q. Of what?

A. Of the Virginia State Conference of NAACP branches.

[fol. 131] By Mr. Carter:

Q. Are you paid any compensation for that job?

A. No, I am not.

Q. You heard Mr. Banks testimony that a person would come into his office and if he determined there was a question of racial discrimination and the possibility of immediate legal action, he would refer the case to the chairman, or to you, or some other member of the Committee. From that point on, would you explain how it operates, because I think that point of the matter is not clear.

A. People who come to me in my capacity as Chairman of the Legal Committee, either of their own volition or directly from some local branch, or after having been directed there by Mr. Banks, assuming they come from Mr. Banks, I would talk with them. If their problem is a matter that affects Negroes generally, which is the usual criteria for determining whether or not the State Conference is going to become involved in the situation and there is evidence of racial discrimination, we will advise the people that I will recommend to the Conference that they accept the case.

As to what would happen then would depend somewhat on the person's wishes. There have been instances where people have come from other parts of the State and I have [fol. 132] endeavored to refer them to the attorney nearest them in that particular part of the State. If for some reason they may not want that particular attorney to handle the case—it just so happens, as a matter of development in this State, Your Honors, Hill, Martin and Robinson have attracted quite a bit of attention as being lawyers handling civil rights matters and a lot of people feel that we are their preference. Consequently, we do handle the majority of the case. (sic) But in recent years we have endeavored to get them to utilize the services of lawyers in various sections of the State where we have attorneys.

By Judge Soper:

Q. Who are the members of that firm, Mr. Hill?

A. Well, we are not a firm any longer, but we were for a number of years.

Q. Give the individual's full names.

A. Oliver W. Hill, Martin A. Martin, and Spotswood W. Robinson, III.

Q. Where were they located.

A. In Richmond, Virginia.

Q. And they are still located individually?

A. Well, Mr. Robinson is by himself. Martin and I are still together.

Q. But in Richmond?

A. In Richmond, Virginia, yes, sir.

[fol. 133] Judge Soper: All right.

A. (Continuing) It would also depend on what the situation was involved. Most of these instances, such as has been indicated, involve the situation where you have a lot of difficulty about bus transportation, people who get on the bus and refused to move and they would be arrested. We would get a call about it. We talked to the people. Now, if it was a lawyer in that particular area, we would usually refer the matter to the attorney in that area. If it was around here, we would frequently—one of us would frequently handle the situation.

By Mr. Carter:

Q. By a lawyer in that area, Mr. Hill, do you mean the lawyers you referred to?

A. The members of the legal staff of the Virginia State Conference, that's right.

By Judge Soper:

Q. Before you leave that, let us assume, Mr. Hill, that you have reached the conclusion that the complaint is one within the general scope of the Association's work. Then how do you designate the lawyer to take care of that? Or rather before you get to that, is your decision final or do we have to refer that to somebody else?

A. I never had to refer to anyone else. We have always acted on a more or less cooperative basis. I think I may [fol. 134] be the oldest member of the group—

Q. Is there a chain of the Conference?

A. I would make a recommendation to the president that we accept this particular case.

Q. What I am saying is, do you have to make a recommendation and get the assent of the Chairman of the Conference?

A. Of the President of the Conference, yes, sir. We have to concur.

Q. So that your decision is not final?

A. No, sir.

Q. Now then, we will assume that you reported to the president and he is (sic) Okayed the case. Now then, what steps are taken for the employment of the lawyer and by whom?

A. Well, that would depend on the situation, where it was located, and a number of factors.

Q. You have told us about what would happen ordinarily in a bus case. You would find a lawyer that was in that neighborhood and was on your staff.

A. That's right.

Q. And you would select him?

A. Generally, yes, sir, I would call him up and ask him to handle the case.

Q. And I gather from what you say that the client, [fol. 135] and getting a lawyer free of charge, falls in with your suggestion?

A. I never had one to complain yet, Judge Soper.

Q. Who is it that makes this selection of the lawyer? Do you do it?

A. Well, in those situations I would make the selection, yes, sir.

Q. Then the work is done and the activity's through.

A. That's right.

Q. Who fixes the fee?

A. The lawyer would submit a bill for his services. Now we operate on a basis of a per diem. Assuming that he had a case, and usually, quite frequently in these criminal cases they get continued two or three times, and so forth. He may submit a bill for part of a day, for two or three days when he had to make an appearance in court, and that totaled up to a certain amount of money. If he had to go to some other place from his home residence, he would have

mileage. We allow mileage at the rate of eight cents a mileage. He would have his mileage. He would submit the bill to me; I would examine it. If it appeared to be Okay, I would approve it and send it to the President of the State Conference. On the basis of my approval and his approval, it would then be sent to the Treasurer and a check would be [fol. 136] drawn and the man would be paid.

Mr. Carter: You have asked the questions that I was going to ask.

By Judge Hoffman:

Q. Do you ever, Mr. Hill, have occasion to have people come to you that either through reference or by reason of the establishment of what reputation you may have developed in certain fields, and who definitely did not have a matter involving constitutional rights or civil rights, but let us say someone has an injury by reason of an automobile accident, what do you do with that type of individual?

A. Well, we advise them that this is not a matter that the NAACP handle and that they will have to get themselves an attorney of their own choosing on a private basis. In some instances, I have been retained. Plenty number of instances, they have gone to other counsel. We frequently get—we don't get many of that type of situation, but (sic) what we do get constantly is a large number of people who come and say that they have exhausted their private means and now they are coming to us for help. We frequently determine that isn't a matter that involves anything that the NAACP can expend funds for. But in a number of instances we have gone on and (sic) individual basis and tried to help them. We get a lot of situations where people [fol. 137] come in and claim they don't have any money for an attorney, but it is still a matter that just affects them as an individual. It might affect anybody. We don't feel race had anything to do with it. We handle a lot of those things just on a personal basis. But so far as the type of situations you have asked me about, we advise them that they have to get a private attorney to handle the matter, and they do.

Cross examination.

By Mr. Mays:

Q. Mr. Hill, let's take the specific case in the Prince Edward County which went up to the Supreme Court of the United States. Will you state in your own fashion just how the arrangement was entered into between the plaintiffs and the attorneys in that case?

A. Well, I can give you the whole story of the case.

Q. That is what I want.

A. On a Monday afternoon, I got a telephone call that some students in Farmville stated that they had gone out a (sic) strike and they wanted me to come down there immediately. We were in the midst of a conference on a case that had gone to the Court of Appeals involving the situation at Pulaski County. We had to go back to Pulaski on [fol. 138] that day. I told them I couldn't come down there. Over the phone, I suggested that they go on to school. But I said, "If you are not going back to school, write me a letter and I will let you know when I can get down there."

I got a letter from them the next day. We got in touch with them, told them we would be in Farmville that Wednesday on our way to Pulaski.

Q. Who is that letter from?

A. Some of the students. Riding down to Farmville, Mr. Robinson, Dean Hensley, of Virginia Union, and a man named Mr. Carpenter, were going up to Pulaski. We were talking about these children being out on strike and we were fully of the opinion that we were going to advise them to go on back to school because at that time the Clarendon County case had already been filed.

Well, we got down there and saw these children in the basement of this church. We heard their statement, the manner in which they had conducted themselves, the manner in which they organized the strike, they (sic) way they were conducting themselves at that time, and we didn't have the nerve to break their spirit and morale by refusing them any assistance we could give them. So we told them that—incidentally, they had arranged a meeting for the next night. We told them we wouldn't be able to get back. We told them when we did come back through there if their

[fol. 139] parents were behind them on this matter we would meet with them and their parents and if their parents were behind them we would see what we could do about getting the assistance of the State Conference in handling their situation there in Prince Edward.

Mind you, we didn't go into Prince Edward cold. From the time I got out of the service in—well, in the early '46, we had been to Prince Edward County on a number of instances in an effort, at the request of the people of Prince Edward County, to get alleviation of the deplorable school conditions that existed at that time in Prince Edward County. We were unable to get any action on the part of the Prince Edward County officials because they continually complained they didn't have any money to put in the Negro schools, or to put in any schools, so they claimed. And they didn't do anything about it. The condition continued to deteriorate. So we knew these children were up against a most deplorable situation.

As I say, we went to Pulaski. We came back on the return, met with these children and their parents. We discussed with them the proposition of alleviating the condition in Prince Edward County, and we told them that in our opinion the only way they were ever going to eliminate the discriminatory school conditions would be to strike at the source of the evil, and that was the segregated [fol. 140] school, and that if they were interested in doing that, we would see what we could do about it.

Now the people indicated they were interested in doing that; they signed up some authorizations authorizing us to represent them and we took the matter before the State Conference, got the approval of the State Conference to handle the case, and did handle it.

Q. Now you had one meeting with the parents of the children; is that correct?

A. Oh, we had more than one meeting with them.

Q. Well, you came back from Pulaski?

A. As we came back, we met with them and then we went down subsequently on subsequent meetings.

Q. When did you sign them up on your first meeting, when you came back from Pulaski?

A. I think so, Mr. Mays. I wouldn't want to swear to it, I really don't remember.

Q. You certainly wouldn't say positively it was some other time, would you?

A. I don't know. I could probably look at some of the authorizations and maybe figure it out from the dates. I don't remember right this minute.

Q. Don't you remember whether or not it was at the first meeting with the parents that you got them to sign up?

[fol. 141] A. I am sure of this, that certainly if we had authorizations with us—now I don't know whether we had any or not—I am sure we would have got some of them. But I know very definitely that we got definitely from the people that they wanted us to represent them and their children in this matter.

Q. Were these authorizations formed that you sort of carry around or were they made up separately for each case?

A. We will put it this way: We had a form that we would use. We might cut a stencil on a particular case in order that it would include the name of that particular county, but that would be the only change.

Q. These forms that you used down in Prince Edward, were they all one or were there several of them that were distributed for signature?

A. You mean were all on one sheet of paper or a lot signed?

A. (sic) Or of several sheets.

Q. (sic) Oh, no, sir, they were individual sheets of paper because we had the names of the parents and we would also request the names and ages of their children, and that sort of information.

Q. Were the people at the meeting told who their lawyer would be, or did they indicate to you who they wanted?

[fol. 142] A. Oh, as a matter of fact, it was taken for granted that we would be the attorneys for them.

Q. How do you know it was taken for granted by them?

A. Well, nothing to the contrary was stated.

By Judge Soper:

Q. You first heard about it from Prince Edward?

A. I told you, Judge, when the children went out on strike—

Q. The children who sent for you.

A. They called up here and called me.

Judge Soper: Well, you don't want to go over that.

By Judge Hutcheson:

Q. I thought you said you had been there several times prior to that.

A. We had. I had. If I am not mistaken, other attorneys had. But not in the immediate period preceding this. I mean, I have been down there in '46 and '47. Over a period of years, I have been down there a number of times.

Q. In connection with the school?

A. In connection with the schools, yes, sir, but I hadn't been down there immediately preceding the strike.

By Mr. Mays:

Q. Was it represented to the people who were asked [fol. 143] to sign that you were trying to get them new schools or that you were taking this case to the Supreme Court on the segregation issue?

A. We made it very clear to the people that we would take the case to the Supreme—not necessarily to the Supreme Court, but take it to court on the basis of elimination of segregation.

Q. Were the names of the lawyers filled in as of the time these petitions were signed or was it left to you to fill the names in, these authorizations, I mean.

A. I don't know. I mean, I just don't remember.

Q. So so far as you are concerned, it is quite possible that you might simply have handed them blank authorizations and you filled in the lawyers names thereafter?

A. It could have been.

Q. Who were the lawyers whose names ultimately were filled into these authorizations?

A. Hill, Martin and Robinson, I am certain.

Q. As a firm?

A. We were a firm at that time.

Q. And no one else?

A. No one else.

Q. Now you were paid for handling that case, were you not?

[fol. 144] A. Yes, I received compensation.

Q. How much?

A. Well, I would have to go back. I mean, I never got it at one time or anything of that sort.

Q. Will you supply that information to the reporter so we will have a record?

A. As to what I received as compensation for the Prince Edward case?

Q. For what your firm received.

A. Yes, sir.

Q. From whom did you receive them?

A. From the Virginia State Conference of Branches. I will have to check my files to see whether or not I got any money from any other source.

Q. You are not quite sure whether you received money from anyone other than the fund or the Association?

A. Well, I mean I know if I got any money I got it from one of two sources.

Q. One of those two sources?

A. I got it either from Virginia State Conference or from the Legal Defense Fund.

Judge Soper: I can't hear you.

A. (Continuing) I say, there was no problem in my mind, I know what moneys I got I got from one of two sources, but whether—

[fol. 145] By Judge Soper:

Q. What were the two sources?

A. Either the Virginia State Conference of Branches or the Legal Defense Fund. But I don't know whether I got any from the Defense Fund in that matter or not.

By Mr. Mays:

Q. But definitely nothing from individuals?

A. Nothing from individuals, no.

Q. Were you in the Charlottesville case?

A. That is correct.

Q. Will you state to us, as briefly as you can, how your representation came about in that particular case?

A. Some of the parents in Charlottesville asked me to come to Charlottesville and to meet with interested parents concerning the school situation and I went up and met with them. We met in the basement of some building. I don't remember whether it was a church or some building. I discussed the situation with them. I had carried authorizations with me because we were going to discuss the school matter. A number of them signed authorizations. There were also some people from Albemarle County who signed authorizations and subsequently on their behalf I filed a petition with the Charlottesville School Board and knowing—we waited about a number of months and nothing happened, and we filed another petition with the school board [fol. 146] and they still indicated they were going to follow the policy of the State Board of Education and continue the status quo. Then we filed suit.

[fol. 147] Q. Now, in that instance, did you represent the people that you were going to take the case to court based on segregation, or was it in that case an effort to get better schools?

A. No, there is no question about it, not even in the talk about just better schools, because that was after the Supreme Court decision.

Q. At the time you tendered your authorizations to those people, which was at the first meeting in Charlottesville, I understand that the names of the attorneys were left out and later supplied, were they not, originally?

A. There were blank spaces for the name of the attorney. Some of the people filled in my name and some left them blank.

Q. Did any of them fill the firm name in?

A. No, sir. There was no firm.

Q. Did you tell the people how to fill out the blank spaces?

A. No. I told them what it was.

Q. No, but I mean, who put the names in as to the lawyers that represented them?

A. I didn't tell them anything especially about the lawyers. I told them that in order to represent them I would have to have a written authorization.

Q. And some of them put your name in and some simply [fol. 148] signed in blank?

A. That is correct.

Q. Were those blanks later filled in?

A. That is correct.

Q. Who filled them in?

A. Oh, someone in my office.

Q. And what name did they put in?

A. They put in mine.

Q. That was with your full knowledge, of course?

A. Well, I mean I knew that, yes.

Q. Did you take that up with the individuals that had left the name in blank, and ask them whether that was in accordance with their wishes?

A. At the time, Mr. Mays, it was not possible for me to have done so.

Q. But the answer is no?

A. The answer is no, because I knew all of them.

Q. I mean, you had some filled in and some that were not and your office did not know which ones they had filled in?

A. Yes, we had those.

Q. And you don't know which?

A. Except those that were filled in with typewriter, were filled in in my office.

Q. After you found out that your office had filled in on [fol. 149] typewriter your name as counsel on the authorizations and then you realized which particular plaintiffs they were who had not filled your name in themselves, did you communicate with any of them to find out whether they wanted you to be their lawyer?

A. No, because it never occurred to me there was any occasion for it. I was the one that had talked with them.

Q. Well, did you assume because you were the one that went around to talk with them, that you were going to get the business? Is that the normal conclusion?

A. No, but if you were talking about a case and you didn't say anything about anyone else, I would assume you were expecting me to handle the case.

Q. Well, if it was done in a public meeting in which you left the blanks to be filled in.

A. That was not a public meeting in the sense of a public meeting. This was a meeting of parents who were concerned about the situation there in Charlottesville and, as I say, there were some from Albemarle County, but as long as they were all parents with children in school, who had come there to discuss the situation with the idea that I had been invited there—

Q. Can you approximate the number of people that were there?

[fol. 150] A. Oh, I imagine there were about thirty-five or forty people.

Q. And you didn't know them all?

A. Oh, no.

Q. As far as you know, you had not had prior relations with them as attorney and client?

A. Oh, yes, I had had relations with quite a number of them. I knew quite a number of the people. I mean, I didn't know all the names, but I knew a lot of them by sight, and you have got to bear in mind, Mr. Mays, this was not a brand-new, cold-turkey situation. People had been after me to come to Charlottesville for a long time prior to that concerning the schools.

Q. They had not gotten close enough to you to have told you in advance they wanted you as their lawyer?

A. No, because—

Q. Otherwise you would not have left spaces blank.

A. Oh, the space was left blank because what I used was a form of authorization that I had prepared and left the space blank so that I could give it to some other attorneys if they needed some authorizations, or something of that sort. I mean, this was used for this type of situation, and that is the reason the space was blank. It was not the regular printed form of contingent fee contract that you have in your office with your name printed on it. [fol. 151] Q. But it was left blank so the name of the attorney could be filled in?

A. It was left blank so the name could be filled in, yes.

By Judge Soper:

Q. And, as I understand it, they had the opportunity to fill in the name if they wanted to?

A. That is correct.

Q. If they did not fill it in, you took for granted that it was up to you to take the employment?

A. I just took it for granted they expected my name to be filled in.

Judge Soper: All right. That is sufficiently answered.

By Mr. Mays:

Q. I think you mentioned the Clarendon case. Will you state how that relationship grew up between attorney and client, if you know?

A. I did not participate in the Clarendon County case.

Q. All right. I won't pursue it further. How about the Newport News case?

A. I participated in the Newport News case.

Q. Will you tell us about the Newport News case?

A. Well, the clients in Newport News contacted the law- [fol. 152] yer there, W. Hale Thompson, who associated Philip Walker, who is also in Newport News, and at their request Mr. Robinson and I associated in the case with them.

Q. Were you there at the time they signed up?

A. No, I was not.

Q. You don't know anything about how that was signed up?

A. Not of my personal knowledge; I know what Mr. Thompson said.

Q. Were there any other cases brought in Virginia besides those mentioned? Was there one brought in Norfolk?

A. That is correct.

Q. Were you counsel in that case?

A. That is right.

Q. How did that relationship between attorney and client develop?

A. Mr. Ashe met with parents who had invited him to

meet with them, so I am advised, and at his request we entered the case.

Q. Were you there when the parents signed up in that case?

A. No.

Q. What attorneys were involved in the Norfolk case? Yourself, Mr. Ashe, and who else?

A. Hugo Madison and Mr. Robinson.

[fol. 153] Q. Were there any others besides the three mentioned a while ago in the Newport News case?

A. There were four in the Newport News case.

Q. Mr. Robinson—

A. Yes, sir, and Philip Walker.

Q. Were there any other cases brought in Virginia which involved school segregation proper?

A. Yes; there was one in Arlington.

Q. Tell us how that relationship came about between attorney and client.

A. Well, Mr. Brown was the attorney that the parents contacted.

Q. What is his full name?

A. Edwin C. Brown. And at his request we entered the case.

Q. Were you there at the time the authorizations were signed?

A. No.

Q. You don't know whether they were filled in or not?

A. No.

Q. Do you remember the compensation that you received in each of these cases? I asked you about Prince Edward. What about the others? Do you recall?

A. Well, to date I have not received any compensation on it—Norfolk, Newport News, and Charlottesville, and maybe \$150 from Arlington, is all the compensation I have received.

Q. What about the other lawyers? Does the same apply to them, as far as you know?

A. No; Mr. Ashe and Mr. Madison have received some money on expenses and, I think, something on account of fee, but I think that would be all.

Q. In these several cases, has anyone paid you any fee

at all, or obligated himself or herself to pay you any fee at all except from the Fund itself?

A. Now, you say "the Fund"; do you mean the Legal Defense Fund?

Q. That is right.

A. The Legal Defense Fund has not obligated itself to pay me anything.

Q. How about the NAACP?

A. The only expectation I have of receiving compensation is from the Virginia State Conference of NAACP Branches and, in the Charlottesville case, some people in Charlottesville.

Q. You say "people in Charlottesville"—

A. I am talking about the plaintiffs in the case.

Q. And they were the plaintiffs?

A. Yes.

[fol. 155] Q. They were the people in Charlottesville who wanted to pay you?

A. They said they would pay me if I did not receive compensation from the Virginia State Conference.

Q. That is not true of the other cases, is it?

A. By me?

Q. Yes.

A. Well, I have not had any understanding with the plaintiffs. Now, whether or not the local attorney has reached an understanding with them that would include me, I just haven't found that out, either.

Q. Do you know whether the attorney in any of these other cases has been paid any private compensation by any of the individual plaintiffs or their parents?

A. Let me put it this way: If they have been, it has been on condition that they do not be paid by the Virginia State Conference. In other words, there is no possibility of double compensation.

Q. Do you make any investigation yourself, or do you know of anyone who makes an investigation to find out the capacity to pay of the several plaintiffs?

A. None except we just use a matter of general knowledge and observation. We know that this type of litigation is expensive; we also know that it involves matters that affect Negroes in a large area; and we feel that irrespec-

[fol. 156] tive of a man's—at least, I feel that irrespective of a man's individual wealth, that he has as much right to get cooperative action in these cases as anyone else.

Q. In other words, I take it from that, Mr. Hill, you feel that people who come in as plaintiffs here should have their expenses and attorneys' fees taken care of by a fund irrespective of their capacity to pay?

A. Well, I would put it, first, on the basis of the individual. I see nothing wrong with the individual, if he is wealthy enough, to fight a public problem at his own individual expense, but I certainly don't see anything wrong with an individual, even though he may have some means individually, of getting concerted support on a matter that affects the public.

Q. Is it fair to put it this way, then: that if a man has the means and is willing to pay, then you would look to him to pay, but if he had the means and felt it should be done for him, then in that case the Conference or whoever put up the money should put it up for him.

A. I might view it that way if the situation ever developed. I have never had the situation confront me.

Q. Well, have you investigated enough to find out the capacity to pay of these several clients?

A. As I said, in a general way I pretty well know the [fol. 157] economic level of most of the people we have represented. Now, there are some you could find, one or two individuals, who are well above the means of the general group, although there has been nobody that I have known of that was in such a situation that it was shocking to my conscience and I could not go ahead and do something for the individual.

Q. Do you remember attending the hearing before the Committee on Courts of Justice of the House of Delegates of the General Assembly of Virginia?

A. You say, do I remember it?

Q. Yes, which was on or about September 10, 1956. Do you remember such a hearing?

A. Which hearing was that? You characterized it. What was it?

Q. It was a hearing before the Courts of Justice Committee of the General Assembly in connection with these bills. Did you not appear before them?

A. I appeared before a committee on some of these bills. I don't remember exactly which they were now.

Q. Do you remember saying to that committee that the NAACP had no objection to complying with the laws that all similar organizations must comply with?

A. I may have said that.

Q. You don't deny it?

[fol. 158] A. No, I don't deny it.

Q. Did you at the same meeting, or committee hearing, state that the NAACP has never engaged in the improper, illegal, or unethical practices like those that the proposed legislation was aimed at?

A. Well, as I recall, there was quite a little talk and in your bills—

Q. Not my bills.

A. I didn't mean the personal reference—the bills that we have under consideration here. There has always been a lot of talk about instigating and soliciting litigation. Well, we have never gone out and solicited a client or plaintiff in a case, to my knowledge, in Virginia. I mean, I have not done it and, to my knowledge, no one else has done it. That is the type of thing I was talking about. We don't do any ambulance chasing about these things. We take cases as they come. And the situation that I have pointed out quite a number of times here, if we were going to take a test case for the school situation in Virginia, we never would have taken a case like Farmville. If we were going to take something, we would take something in an area where the people, in our opinion, were more enlightened on segregation.

Q. Or at least would not resist so much?

A. Well, I will put it my way—more enlightened—be- [fol. 159] cause I think if they are enlightened we will get over the resistance.

Q. If the NAACP, as you said to the Committee never engaged in these practices, do you think it is consistent to come here and contest the statutes?

Judge Soper: I don't understand.

Mr. Mays: My question was this: If the NAACP was not engaged in those practices, which he denied before the

committee, which these acts themselves would prohibit, in his view, what standing does he have to come here and complain about it?

Judge Soper: I don't think that is a proper question. This man is a fact witness. If you want to ask him a question, go ahead. You are trying to get him to express an opinion on the reasonableness of this law.

By Mr. Mays:

Q. Did you at any time say to the members of that committee that you defied them to point out factually anything that the NAACP was doing or the Fund was doing which was contrary to the provisions of these statutes?

A. I don't recall tying myself down, Mr. Mays, to these statutes, but I did make a statement to the effect—

Judge Soper: Now, aren't we going into a field that is [fol. 160] purely argumentative?

By Mr. Mays:

Q. Well, I will ask this: Was there a cross burned at your home in August '55?

A. There was.

Q. Who do you think was responsible for that action?

Judge Soper: I can't understand you, Mr. Mays.

By Mr. Mays:

Q. Who do you think was responsible for that action?

Judge Soper: What action?

Mr. Mays: Burning a cross at his house, Your Honor, in August 1955.

Judge Soper: I say that has got nothing to do with the case.

Mr. Mays: I have no further questions, Your Honor.

Mr. Gravatt: If the Court please, I would like to ask Mr. Hill one or two questions and I will try to be brief.

Q. Mr. Hill, I believe you stated that when you went to Prince Edward, to the meeting there with the parents, the parents wanted better schools. Is that correct?

[fol. 161] A. I think I said, Mr. Gravatt, that we advised the parents that the only way they could alleviate the discriminatory educational conditions that they were complaining of was the elimination of segregation.

Q. Well, I ask you, did the parents at that meeting tell you that what they wanted was better schools?

A. The parents spoke about the school conditions. In full answer to your question, I am certain that in the opinion of some of them the only thing they contemplated as what we will call a new school—just a minute—on the other hand, these people were consulting me, I was advising them in my capacity as an attorney, and in advising them in my capacity as an attorney I thought I should give them the best legal advice I could under the circumstances that were confronting them, and in my honest opinion the only way to eliminate the unequal educational opportunities in Virginia or anywhere else was to eliminate the segregation, and I so told them.

Q. And, after telling them, you left, and did you tell them that if their parents would support them, you would represent them?

A. You asked me about the meeting when I met the parents?

Q. Yes. I am asking you now about the meeting when you met the children.

[fol. 162] A. Oh, the meeting when I met the children. We merely told them, as I recall it, that their parents were behind them in this thing and we would see what we could do about it. I don't remember going into it in great detail at that time, because we were in a rush to get to Pulaski.

Q. Did you offer them any forms for them to sign to show whether their parents were with them or not, as you put it?

A. I don't think so, because there was nobody to leave them with.

Q. Now, you testified about a meeting with the parents and had them sign some kind of form that you had?

A. Yes.

Q. Was that form explained to these people, the meaning of it and what it implied?

A. Yes.

Q. You did file a suit here asking the Court—or attacking the facilities of Prince Edward as being unequal facilities, did you not?

A. No. We filed a suit to eliminate the discriminatory conditions there.

Q. Didn't you attack the conditions in Prince Edward on both bases that the facilities were not equal and, if they were made equal, they would still be discriminatory because [fol. 163] of the State statutes requiring segregation?

Mr. Carter: If the Court please, we have not made any objection, because we want the whole truth to come out here, but this does not seem to be germane to the question that is raised in this case which Mr. Hill was testifying about, as to how the NAACP is involved in litigation, and so forth, and we object to the question about what the theory of the plaintiff is, and so forth.

Mr. Gravatt: I don't object to withdrawing the question. I am trying to be as factual as I can.

Judge Soper: All right. It is withdrawn.

By Mr. Gravatt:

Q. Did you ever communicate with any of these people personally after you got their names on this paper that you had them sign?

A. Yes.

Q. Have you written from your office to the plaintiffs in this litigation at any time since 1951 a written report upon the litigation?

A. Not in the same sense in which, I imagine, you use the word "report," no.

Q. Have you got any correspondence that you have addressed to all of the plaintiffs in that litigation to give them advice as to what has taken place and to find out their wishes with respect to the next step in the proceeding?

A. No.

Q. You now have a proceeding pending, asking the Court for an order to admit the children of some seventy-five parents to white schools in Prince Edward; is that correct?

A. That was the original suit.

Q. Have you ever inquired of any of these parents, since the decision of the Supreme Court in 1954, whether they wanted their children to go to a mixed school or not?

A. Now, that is a different question. We have conferred with parents who were plaintiffs in the case since the decision and from time to time during the course of this litigation. You asked me, had I sent them a written report. I answered no, but we have conferred with the parents in Prince Edward County.

Q. How many of them?

A. Oh, we would advise them we were going to be there and as many as would come would attend.

Q. How did you advise them?

A. By sending them a notice of the meeting.

Q. Have you got a record to show you have sent notice [fol. 165] to these people of an opportunity to confer with you in Prince Edward County?

A. I am sure we have told them we were coming down and we wanted to meet with them.

Q. I would like for you to file in this suit copies to any of these plaintiffs of a notice giving opportunity to have a conference with you since this suit was filed.

Mr. Carter: If Your Honor please, we don't see the materiality of this.

Judge Soper: It is very far afield. It is not going to do any good or any harm to have it, but if counsel wishes it, I suppose he is entitled to it. The witness has already testified that he conferred with these people from time to time. Now, what particular good it is going to do to show that he wrote them a letter, or to have the record encumbered with copies of letters to these people to come to a meeting, I don't know.

Mr. Gravatt: It is all right with me, sir. I want to be fair with the witness about the matter and I felt it was my obligation to do it.

Judge Soper: That is all right. Go ahead.

By Mr. Gravatt:

Q. Mr. Hill, is the State Conference of Branches contributing, or has it contributed to pay costs of

attorneys' fees of litigation in Newport News, Virginia, within the past year?

A. Yes, it has contributed to costs.

Q. Is it obligated to pay further costs and attorneys' fees there—the State Conference of Branches?

A. It is obligated, yes.

Q. To whom is it obligated to pay costs and attorneys' fees?

A. To Mr. Walker, to Mr. Thompson, and to me.

Q. Will you state how much, to what extent it is obligated? Is it obligated to pay all of the costs of such bills as may be presented, or on a per diem basis, or just to what extent is it obligated to pay?

A. It is obligated to pay the actual costs and a reasonable per diem based on the prevailing rate.

Q. And does the same apply to the Norfolk case, as to Mr. Ashe, Mr. Madison, and yourself?

A. Yes.

Q. Does the same apply to the Arlington case with reference to Mr. Brown and yourself?

A. Yes.

Q. And does the same apply to the Charlottesville case? And who are the attorneys in that case?

A. In the Charlottesville case we had Mr. Martin, Mr. [fol. 167] Ealey, and Mr. Tucker as counsel of record.

Q. Martin, Ealey, Tucker, and yourself?

A. Yes, and Mr. Robinson.

Q. Is Mr. Robinson in that case also?

A. Yes, sir.

Q. Is the Virginia State Conference of Branches paying you and Martin and Ealey and Tucker in that case?

A. Well, they have not paid, but the Virginia State Conference is obligated to pay.

Q. And Mr. Robinson, of course, is employed by the Legal Defense Fund?

A. That is right.

By Judge Hoffman:

Q. When an individual plaintiff has written you a letter advising of his or her desire to have you withdraw from

representation, have you ever had that problem presented, and if so, what has been your reaction?

A. Judge Hoffman, I have never had any letter asking me to withdraw from any case. Now, in one or two instances we have had people to indicate that they wanted to withdraw from a case, and the most recent instance was a white family in the Arlington case. They requested that they be permitted to withdraw. We filed a petition with the Court setting forth their reasons and requested the Court to withdraw their names from the case. And that would [fol. 168] be done in any situation if the people wanted to withdraw.

Mr. Gravatt: Are you through, Judge Hoffman?

Judge Hoffman: Yes, I am through.

By Mr. Gravatt:

Q. I want to ask you just one or two other questions. All of the attorneys whom you have mentioned, except Mr. Robinson, and I am not sure about him, are members of the Legal Staff of the Virginia Conference of Branches; is that correct?

A. That is correct, all of the lawyers I have mentioned.

Q. And those counsel—yourself and those associated with you—are the people who approve the payment of litigation under the auspices of the Virginia State Conference of Branches; is that correct?

A. No.

Q. You do that without any consultation?

A. Oh, I didn't get the purport of your question. They participate in the decisions concerning the types of litigation, yes, but I thought you meant who had the final authority about authorizing the cases, and that would be both.

Q. And that is the committee and the group which approves the attorneys' fees that are to be paid to these same [fol. 169] people; in other words, you have got to submit a bill for your services in these cases to the Legal Staff of the Virginia State Conference and then, as attorney for the Virginia State Conference, you have got to approve your bill and pass it on to the president for his approval; is that correct?

A. Bills for legal services—the only person who passes on my particular bills are the president, but Branch bills are passed with my approval and that of the president.

Mr. Gravatt: I think that is all.

Judge Soper: Call another witness.

While we are waiting for this witness, Gentlemen, we will take a recess for five minutes.

[fol. 170] JACK C. ORNDORFF called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Robinson:

Q. Where do you reside, Mr. Orndorff?

A. In Arlington, Virginia.

Q. How long have you resided there?

A. About five and one-half years.

Q. Mr. Orndorff, did you have any connection any connection (sic) with the suit filed during the year 1956 involving the public schools of Arlington County?

A. Yes, I did.

Q. What were your connection with that case?

A. I was one of the original plaintiffs in the case.

Q. Did you have an occasion, at any time subsequent to the filing of that case, to receive any anonymous telephone calls?

A. I did not.

Q. Mr. Orndorff, would you state for the information of the Court whether you are here pursuant to a subpoena?

A. I am. I am not here voluntarily.

[fol. 171] Q. Let me repeat the question I asked you a moment ago. After you became a plaintiff, after the suit in which you were plaintiff was filed, involving the public schools of Arlington County, was there any occasion upon which you received, after that suit was filed, an anonymous telephone call?

A. Yes, there was. There were a number of anonymous calls and also some letters. The calls were in the nature of obscene, threat of violence to person and property.

Q. When in relation to the filing of the case in point of time did you begin to receive those communications?

A. As I can recall, just a day or two prior to the filing of the case, a small announcement came out in the newspapers listing the names of the defendants.

Judge Soper: Mr. Robinson, would you mind standing on this side of the table, and then I think we can all hear the witness better.

By Mr. Robinson:

Q. Mr. Orndorff, my question was, and would you give your answer again, when was it that you began to receive those anonymous telephone calls?

A. As I could recall it, to the best of my knowledge, several days prior to the filing of the suit there was an announcement that appeared in the newspaper listing the [fol. 172] names of the plaintiffs.

Q. In the case?

A. In the case.

Q. Did you have an occasion to see the news item to which you have made reference?

A. Yes, I did.

Q. Was your name included among the parties who were named as party plaintiffs to the case?

A. Yes, it was.

Q. What types of communications did you receive? Were there any others in addition to the telephone calls that you have mentioned?

A. Well, there were also some in the form of letters through the mail and there was one telegram.

Q. Where are the letters are the letters (sic) and the telegram now?

A. The FBI has them.

Q. How many letters did you receive?

A. I think it was approximately eight that we turned to the FBI.

Q. Over what period of time did you receive the telephone calls?

A. As I can recall it, it was on a Wednesday that the calls first started. Then in Friday's paper there was a more

detailed newspaper account of it and then there came a [fol. 173] barrage of calls every 15 or 20 minutes during the day.

Q. In the last newspaper publication, did you have an occasion to see it?

A. Yes, I did.

Q. Was your name mentioned in that news story?

A. Yes, sir, it was.

Q. Would you characterize these calls? Would you describe, in a general sort of way, what the calls were? In other words, characterize them.

A. Well, they were calls, as I think I mentioned before, that threatened violence, both to my property and to myself, and there also were a great number of obscene calls that I wouldn't want to use the language.

Q. Please don't. Mr. Orndorff, are you still receiving those calls?

A. No, sir.

Q. When did you stop receiving those calls and letters?

A. The calls that came in Friday, my mother-in-law was at home and she is a widow and my wife is the only relative that she now has, and everything is wrapped up with her. She received some of the calls. She became so adversely psychologically affected by them that we had to call some spiritual aid for her and I felt and could see that if this thing continued that she would have to receive [fol. 174] hospitalization of some sort to treat the state that these calls had made her get into. That was on a Friday. That weekend, I went to my home town and the publicity of it had reached thee (sic).

Q. Where is that?

A. In Winchester.

Q. Virginia?

A. Yes, sir.

Q. All right.

A. It was then that I decided to withdraw from the case. I came back to Arlington on Sunday and called the newspapers, stating that I was going to withdraw from the case. The story came out on the following Monday and from Monday through probably Wednesday, a barrage of calls continued, started to taper off, as I can recall it,

toward the middle of the week. But periodically after that, for, I don't know what length of time, we got these harassing silent calls at night, maybe one or two. Then we have received none since that date.

Q. Had you had an occasion to experience difficulties of this sort prior to the time that it was published in the newspaper that you were one of the plaintiffs in the Arlington School case?

A. I did not, no, sir.

Mr. Robinson: That is all.

[fol. 175] By Judge Soper:

Q. What is your occupation, Mr. Orndorff?

A. I am an accountant-office manager, sir.

Q. And you reside where?

A. In Arlington, Virginia.

Q. Your business there, too?

A. My employer is located there, yes.

Mr. Mays: No questions, sir.

Mr. Robinson: Mr. Robertson, please.

Mr. Mays: Your Honor, while the witness is on the way, it may be well for me to call Your Honor's attention that the new Attorney General was sworn in at 11 o'clock this morning, Mr. Kenneth C. Patty I thought counsel for the other side might have some motion in that connection and I thought I should inform you as a fact that he was sworn in at 11 o'clock.

Judge Soper: You want to substitute it?

Mr. Carter: Yes, sir, we make such a motion.

Judge Soper: Thank you, Mr. Mays.

I suppose that the stenographer has gotten the interchange showing that the new Attorney General, Mr. Patty's name will be substituted for Mr. Almond on the record. That is what we want. I assume that it ought to be done physically in due time.

[fol. 176] Mr. Hill: Do you want us to prepare an order?

Judge Soper: Very well.

ROBERT D. ROBERTSON, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Where do you live, Mr. Robertson?

A. 920 Lexington Street, Norfolk, Virginia.

Q. Do you hold any position or office in the Norfolk branch of the National Association for the Advancement of Colored People?

A. Yes, I am the president.

Q. How long have you held that office?

A. Four years.

Q. Prior to becoming president of the Norfolk branch, did you hold any other office in that branch?

A. I was a member of the board for three years.

Q. Have you, since you assumed the presidency of the Norfolk branch, had occasion to receive any anonymous communications?

A. I have received anonymous telephone calls.

Q. When did you begin receiving those calls?

A. Some time in 1955.

[fol. 177] Q. What was the occasion following which you began to receive those calls?

A. There was a subdivision in Norfolk County called Coronado. Houses were put up for sale and Negroes bought those homes. Shortly after moving in, some of those houses were bombed and stoned. The people who lived in those homes applied to the authorities in Norfolk County for protection. They got little or none. Then they came to the NAACP and asked could we do something for them. I, as President of the Branch, called some ministers together and a few of the citizens and requested a meeting of the people who were the officials of Norfolk County, including the Sheriff. We met with them one day and it was publicized in the newspaper that afternoon.

Q. Was your name mentioned in the newspaper stories in connection with this?

A. Yes, my name was mentioned as President of the Branch who was called in meeting with these officers.

Q. What happened following that?

A. That very night, I began to receive telephone calls that appeared about every 15 minutes, sometimes all night long.

Q. Do you still receive telephone calls?

A. Yes, sir.

Q. Would you characterize for the information of the [fol. 178] Court the kinds of telephone calls you have been receiving? In other words, have they all been about?

A. Well, they have been very abusive, had some pretty rough language in them.

Q. Has there any particular of the day to which those telephone calls have been combined?

A. They were mostly at night. Some come to the office, our office, in the day time, but most of the calls are at night. Sometimes at 15 minute periods, as I said before. Some will come sometimes if I happen to ask who was this person there, they might say, "I am from a taxi cab company and I was told to wake you up at a certain time." Sometimes a person would not wait for me to ask who it is, they would say something dirty over the phone and hang up.

Q. Have these telephone calls during the period of approximately two years to which you have testified occurred with the same or approximately the same degree of frequency throughout that period?

A. No. Sometimes they will stop for a period of, well, for some period. But I notice that they come more frequently if a decision favorable to Negroes as to any case is granted in the Court. Then these calls will pick up.

Q. Was this true when the two decisions of the Norfolk school case were published in the newspapers?

[fol. 179] A. Yes, sir. Also in the Seashore State Park case.

Q. Now, Mr. Robertson, have there been any other events of an annoying character associated with the telephone calls?

A. Yes. One event almost drove my family crazy. My work for a labor union takes me all over the country. I went home one evening and my family was quite excited. I inquired what was the trouble. My wife greeted me at the

door and said, "I am so glad to see you because a call just came that you were going to be killed today."

So I said, "Well, I am home and I am not dead, anyway."

A half hour after that, a hearse was at my door and I answered the door. The fellow said he was sent to pick up my dead body. My family has been afraid every time I leave the house since that time.

Q. Mr. Robertson, did you experience difficulties of this sort prior to the current incident to which you have testified?

A. No, sir.

Q. As President of the Norfolk Branch, do you have anything to do with the solicitation of memberships?

A. Yes, I do.

Q. Would you describe in a general way what your [fol. 180] activities in that regard have involved?

A. Well, when we were about to start our drive, I would select the committee of workers responsible to me and the director of the drive to solicit the memberships. During the drive, I would check on that committee of workers to find out if they have made progress. I also will check out list from the previous year and if the members—if the workers have not brought in renewals for members, then I will contact those members from our office.

Q. Was the campaign for members conducted by the Norfolk Branch during the calendar year of 1957?

A. Yes.

Q. Are you familiar with the results of that campaign?

A. Well, the campaign started in February of 1957 and—the first time that we knew that we are going to have trouble, we had a tough time getting our workers who worked with us in previous years to solicit the memberships this year. Quite a few of our workers told us they were willing to work for the NAACP, but they were afraid to solicit memberships until this matter of registration of names was cleared up.

Q. Mr. Robertson, is your campaign continuing or has it ended?

A. It is ended now.

[fol. 181] Q. How many members did your campaign net you during 1957?

A. 2,092.

Q. Are you familiar with these memberships that you obtained during your campaign of 1956? First, was there a campaign in 1956?

A. Yes, sir.

Q. During the same periods or approximately the same periods in each year?

A. Yes, sir.

Q. Do you recall approximately how many members your 1956 campaign netted you in Norfolk?

A. Yes, sir.

Q. Approximately how many?

A. A little over three, four hundred.

Q. How about the campaign in 1955?

A. 2900.

Q. Did you have an occasion to make any sort of an investigation in your capacity as President of the Norfolk Branch to determine why your memberships in 1957 were less than those in 1956?

A. Yes, I did investigate it.

Q. What did your investigation involve? Just how did you go about it?

A. We have occasional reports every two weeks from our [fol. 182] solicitors. At those report meetings I am always the President. I have also been worried about the progress being made this year because it was so far behind the progress in 1955 and '56. The workers, all the ones that we had working for us, the ones who did stay with us and worked this year, had the same response when asked about the slowing down of memberships. That was that they couldn't get people to take our memberships this year because they were afraid of their name being publicized in the newspapers.

Q. Do you do any canvassing for members, yourself?

A. Yes, I do, in a very small way, but I do contact all of the members of previous years, at least I did this year.

Q. During 1957?

A. I did contact all of the members from '56 who have not renewed their memberships. I did contact them by letters and postcards to find out why they haven't renewed.

Q. Did you receive, yourself, any response to those requests?

A. Yes, sir, I received verbal response from hundreds of people.

Q. In effect, what were these responses?

A. Well, the only response that I have got from the [fol. 183] people who have come into the office in answer to the cards that they have received for renewal of their membership was that they were still with the NAACP but they would rather wait until this matter of registration is cleared up before they take out their memberships.

Q. Was anything else stated as a reason why the memberships were not being renewed?

A. No, sir.

Mr. Robinson: Your witness.

By Judge Soper:

Q. What did you say your occupation was, Mr. Robertson?

A. I represent a labor union, sir, I am a labor organizer.

Q. In Norfolk, or where?

A. The main office of this union is in Chicago and we have branches all over the country.

Q. And your branch is where?

A. My office is in Norfolk.

Mr. Mays: We have no questions.

Judge Soper: Thank you, Mr. Robertson.

Mr. Robinson: May it please the Court, am I correct in my assumption that unless counsel for the defendants would request that these witnesses be retained, they would [fol. 184] be free to leave?

Judge Soper: I assume that is correct.

Mr. Mays: I do not want to speak for the Court, but it is agreeable to us.

Judge Soper: Very well, sir.

Mr. Robinson: Mrs. Sarah Brooks.

Mrs. SARAH BROOKS, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Robinson:

Q. Where do you reside, Mrs. Brooks?

A. I live 100 Langford Avenue, Charlottesville, Virginia.

Q. What is your occupation, Mrs. Brooks?

A. My occupation is day's work, work by the hour.

Q. Did you have any connection with the case recently brought in the United States District Court for the Western District of Virginia involving the public schools of the City of Charlottesville?

A. Yes, sir.

Q. Can you speak up just a little louder so that we all can hear you? Were you one of the plaintiffs in that case, Mrs. Brooks?

[fol. 185] A. Yes, sir, I were.

Q. Did you experience any difficulty of any sort following your becoming a plaintiff in this case?

A. Yes, sir.

Q. Would you take your time and state to the Court just what the trouble was.

A. Well, the trouble were I worked at 1114 Sherwood Road for Mrs. Peggy M. Dudley; and she worked out, too. So I worked for her. She come home one afternoon—

Q. Just a moment. How long had you worked for her?

A. Oh, I have been in their family ever since I was eight years old. I worked for her grandmother and raised up with her mother before she was born, and after she was borned and got married and had a daughter, I worked for her by the day. I worked for her grandmother and her mother by the week, and I worked for her by the day after she got married and grewed up.

Q. Would you proceed and tell the Court just what happened?

A. One day in October, in 1956, she came home one Friday afternoon and said to me, "Sarah, have you seen the paper."

I said no, I hadn't seen the paper, but I had. But I told her to see what she was going to say.

She said, "I saw your granddaughter's name in there, [fol. 186] Caroline Marie Dodson." She said, "Are you the guardian over her?"

I said, "Yes."

She said, "I seen your name in there."

I said, "That's good." I know I hadn't done anything.

"Well, I don't like it," she said.

Q. Just a moment. Might I ask you this. What was the newspaper story concerning which she was discussing with you? What was it all about?

A. It was all about what I am the guardian over, my grandchild, and I decided I wanted her to go to a better school, get a better education.

Q. Was there anything about the article that related to the schools concerning which I asked you questions moments ago?

A. Yes, sir.

Q. Would you proceed and state to the Court just what transpired between your employer and yourself on this occasion?

A. Well, she said to me, "Sarah, I don't like it."

She said, "I seen your name in the paper. You are the guardian of your grandchild?"

I said, "Yes." I call her "Miss Peggy" because I have been knowing her before she was born.

[fol. 187] She said, "Well, I don't like it."

I said, "What do you mean, Miss Peggy?"

She said, "I don't like it. You have been in the family for many years and," she said, "This way we have to part." She said, "I ask you for the key."

I said, "Thank you, Miss Peggy. You take care of your daughter and I will take care of mine."

Judge Soper: I couldn't follow you.

A. I had the key to her door. I always had the key to her door. I taken care of her house—

By Mr. Robinson:

Q. What was it that transpired about the key? Can you speak up just a bit?

A. I handed her the key.

Q. Why did you hand her the key?

A. Because she asked me for it.

Q. What did that mean?

A. That means she fired me. She said, "I don't need you any more."

Q. Have you worked for this party since that time?

A. No, I haven't.

Q. Have you worked at all since this time?

A. Yes, sir.

Q. On approximately how many different positions since this occurred?

[fol. 188] A. After that, two mens come on my job where I work at and asked me questions. They came up on Mason Lane at Wingfield's house and after that went to Mrs. Roberts on Baker Street, come ask me the same questions over. After that they left Mrs. Roberts and came over to Dr. Edwards, over on Greenleaf Terrace, and asked me the same questions, two men.

Q. Do you know who these men were?

A. I know when I see them. She told me their names once, but they had a tape recorder.

Q. They had what?

A. Every time they came to see me, they had a tape recorder.

Q. Did they identify themselves in any shape?

A. Every time they come to a different house, said, "Sarah, you know me?"

I said, "Yes, I know you."

Q. What were they connected with, if you know that?

A. They come around asking me, said, "Did you know what you were signing when you signed your name for your child to go to a better school?"

I said, "Yes, I know what I was signing, didn't nobody ask me to sign, I signed on my own accord. Didn't nobody make me sign at all."

Q. Were these three places that you worked places of [fol. 189] employment that these men came to see you?

A. Where I worked at, came right on the job, and where I lived at, too.

Q. Did these men represent themselves as representing any particular body or any particular outfit?

A. They told me they was from some place or other. I couldn't think.

Q. Who did these men, these people, say that they represented? Who did they tell you they represented?

A. They states to me they was from the Court.

Q. Was anything said about any committee when these men visited you?

A. That's what they said, some kind of a committee, but I couldn't think what they were saying. The same mens came.

Q. Did you have an occasion to testify before the committee frequently referred to as the Boatright Committee in Charlottesville some time this summer?

A. Yes, sir, I did.

Q. Did you have occasion to see these men who visited you on your jobs when you went before the committee to testify?

A. They were right there.

Mr. Robinson: That is all.

[fol. 190] Cross Examination.

By Mr. Mays:

Q. You mentioning signing some kind of a paper. Do you know what that paper was?

A. I know I was signing a paper for my child to go to go (sic) to a better school.

Q. Who was present at the time you signed the paper? Was that at a public meeting of some sort?

A. Public meeting.

Q. Who spoke at the meeting on that occasion?

A. Well, in a big meeting like that I don't know who all was speaking, but anyway I went up to sign this paper.

Q. Was Mr. Hill, who is sitting second from the right of the counsel table, there that night, or whenever it was?

A. I think I seen him once.

Q. Was he there at the time you signed the paper?

A. I think he were.

Q. Did he explain to you or did anyone explain to you what the paper was?

A. Nobody explained to me at all.

Q. Didn't they give you some idea what the paper was for?

[fol. 191] A. Nobody give me no idea what the paper was for. I just heard someone say all the mothers or guardians that wanted children to go to a better school, and I jumped up and went up and signed my name.

Q. Was that from somebody in the audience or somebody from the platform talking?

A. It wasn't no platform.

Q. It wasn't any platform? Was it one of the speakers?

A. It was one of the speakers. I don't know who it was.

Q. You don't know who it was?

A. No.

Q. Did you understand at the time you signed that paper you were giving somebody the right to represent you as a lawyer in court?

A. Well, at the time I know, I just wanted—I just wanted my kid to go to a better school. The reason I signed, because I didn't have the opportunity to get an education like I should, I wanted my grandchild to get a better education than I did is the reason I signed that paper.

Q. When was the first time that you found out that you were the plaintiff and were involved in bringing a suit? When did you find that out?

[fol. 192] A. I found it out when I went to court.

Q. Did you know at the time you left the meeting, at the time you signed the paper, that you were becoming a party to a suit?

A. No, I didn't.

Q. You did not understand that?

A. I did not know that.

Q. And it was a matter of surprise to you to find out that you had authorized the lawyer to represent you? Isn't that correct?

A. I was surprised.

Q. You were surprised to find that out, weren't you?

A. Yes, I was.

Mr. Mays: Thank you.

By Judge Soper:

Q. Did you know that there was to be a lawsuit?

A. I didn't know at the time, but afterwards I did.

Mr. Gravatt: I have no questions.

Mr. Robinson: No questions.

Judge Soper: All right, thank you.

[fol. 193] Mr. Robinson: Call Mrs. Mildred Brown.

Mrs. MILDRED D. BROWN, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Mrs. Brown, what is your address?

A. 201 Sunset Avenue, Charlottesville, Virginia.

Q. What is your occupation, Mrs. Brown?

A. I keep house for my two children.

Q. Do you have any connection with any organization in Virginia active in the field of race relations?

A. Yes.

Q. And what is that organization?

A. It is the Charlottesville-Albemarle Chapter of Virginia Council on Human Relations.

Q. Would you state in a general way what the purposes and objectives of that organization are?

A. Well, the Constitution states the purposes of the organization: First, to attain, through fact-finding, discussion, and democratic action, equal opportunity for all citizens in Virginia. The organization is a focal point for the people of Virginia who comply with the Supreme Court [fol. 194] decision of May 17, 1954.

Q. Let me ask you this: Have you been subpoenaed to attend the trial here on today?

A. I was.

Q. How long has the Charlottesville Chapter of this organization been in existence?

A. It was formed in July and August of 1956.

Q. Did you have any connection with its organization?

A. Yes, sir.

Q. Have you at any time subsequent to its organization experienced the receipt of any anonymous communications?

A. No.

Q. Did you understand my question?

A. It was that, before that time, had I received any anonymous communications?

Q. No. Have you at any time after the organization of the Charlottesville branch of this organization received any anonymous communications?

A. Yes, sir, I have.

Q. When did you begin receiving such communications?

A. After an organizational meeting of the chapter which took place late in August of 1956.

Q. Do you still receive such communications?

[fol. 195] A. I have not in the last several months.

Q. Over what period of time did you receive these communications?

A. Well, immediately after the August meeting to which I have just referred, I began to get telephone calls as often as every five or ten minutes.

Q. First, let me ask you this, Mrs. Brown: Was there any publicity attendant upon this organizational meeting?

A. Yes; a story appeared in *The Progress*, which is the Charlottesville daily paper.

Q. Was your name mentioned in the news story?

A. Yes, it was.

Q. And how long after this story appeared did you commence receiving these communications?

A. The same day.

Q. What shape or form did these communications assume? Were they by letter, by telephone, or just how were they received?

A. Well, the telephone calls—they were telephone calls.

Q. And how frequently did you receive those calls?

A. For the first several days, during certain periods of

the day, they would come almost as soon as you would hang up from one of them there would be another one; [fol. 196] I would say on an average of perhaps every fifteen minutes for several days and at times in the middle of the night, and then they began to fall off.

Q. Would you describe in a general sort of way the character of the telephone calls that you received?

A. Well, I think of them as falling into three categories: The ones that you would define threats—

Q. Threats of what?

A. Well, several of the telephone calls said that they were coming in to burn the house down. One, I remember, said, "Are you ready to die? We are coming to get you tonight." And one said they were going to "throw me into the river." Now, that type of telephone call I consider a threatening call, and none of these people, of course, ever would say who they were. Some of them would talk in a more reasonable manner. They would say things like, "You are a traitor to your state and you are undermining the government," and things of that nature, but, if they would talk to me, I could talk calmly to them and they would always talk more reasonably if I were allowed to point out to them the fallacies of their thinking.

Then, the third type of telephone call is the one the phone rings, you answer it, and know that they are there but they don't say anything.

Q. Now, during the period that you received those calls, [fol. 197] did you receive them with approximately the same degree of frequency, or were there times during this period that you received them more frequent than you did at other times during that period?

A. Well, this August organizational meeting to which I referred took place on a Thursday evening, so the story was in Friday's *Progress*, and over that entire weekend and, I think during Monday they came with great frequency and then they began to taper off, and I do not believe that I have had any threatening telephone calls or anything but the silent treatment since about Christmas.

Q. Mrs. Brown, were there any other occurrences associated with the receipt of these telephone calls by you?

A. Well, I had a cross burned on my front walk, but nobody called to say they were going to burn the cross.

Q. And when did this happen—

Mr. Mays: If Your Honor please, I think cross-burning has been ruled out of this case. I object to this testimony.

Judge Soper: I beg your pardon?

Mr. Mays: I say, the matter of cross-burning was ruled out of the case on my own cross-examination, and I think this witness should not be permitted to testify to this.

[fol. 198] Judge Soper: I did not see the relevancy of cross-burning when you were talking about professional relations between lawyer and client. It seemed to be quite irrelevant to anything that was before the Court. If you want to put the witness back and ask him that as to this part of the case, I certainly have no objection, but I don't see any real distinction between threatening letters and crosses, which I guess we all know are notoriously used for purposes of this kind.

By Mr. Robinson:

Q. When was it that the cross-burning to which you made reference, Mrs. Brown, occurred?

A. It took place about nine o'clock on September 6.

Q. Where was the cross burned?

A. On my front walk.

Q. Did this occur in the daytime or in the nighttime?

A. At nine p. m.

By Judge Hutcheson:

Q. What year? This year?

A. 1956.

By Judge Soper:

Q. Last year?

[fol. 199] A. Yes, sir.

Q. Is this organization to which you belong composed of white and colored persons both?

A. It is.

By Mr. Robinson:

Q. Mrs. Brown, were there any other difficulties that you experienced during the period that you received these

telephone calls and during the period during which this cross was burned?

A. Would you state the first part of the question?

Q. Did you experience any other kinds of difficulty during this period to which your testimony up to now has related?

A. Yes.

Q. Would you state for the information of the Court just in what this consisted?

A. Well, after it became common knowledge that I was an officer of the Virginia Council on Human Relations, I was shunned by many of my friends of very long standing and the children of those friends were forbidden to come to my house and play with the children. In some cases the friendship had existed over a period of many years, and in one case no explanation was made to me at all. In another case the woman of the couple who stopped having anything to do with us apologized to me for it and she said [fol. 200] it was a very distasteful thing to her, but inasmuch as her husband was in public business, she was afraid that if she were seen with me in public that it would have a detrimental effect on her husband's business.

I have taught Sunday School at Westminster Presbyterian Church for many years, and sometime in the fall, I would say roughly three months after the formation of our local chapter of the Council, some of the parents of the young people that I teach in Sunday School went to the Session of my Church and asked to have me removed as a teacher. However, the Session, after reviewing thoroughly the content of the teaching material, and so on, did not remove me and I still teach there.

Another thing that happened that is related to my activity in the Council is that I am a widow and I receive a large part of my income from the rental of houses, and in several instances workmen who have done a satisfactory job for me over a period of years, have either refused to work for me at all or have made the price so exorbitant that I could not afford to have them work for me.

Q. Any other difficulties of similar character, Mrs. Brown?

A. I can't think of any.

Q. Did you experience any difficulties of this character [fol. 201] prior to the time that you became prominently identified with the Charlottesville Chapter of the Council?

A. No, sir.

Cross examination.

By Mr. Gravatt:

Q. Mrs. Brown, you say that the telephone calls began in August and lasted about fifteen days?

A. I don't believe I said fifteen days. I said they started in August and they tapered off after about fifteen days, and I do not recall that I have received any such telephone calls, except the silent treatment given, since Christmas.

Q. Since Christmas?

A. That is correct.

Q. I see. And when was the cross burned on your walk?

A. I think that it was September 6. It was, I know, on the same day that I had spoken before the General Assembly in opposition to the Governor's batch of bills with regard to schools.

Q. When was the individual known as John Kasper in Charlottesville?

A. I cannot tell you whether he came to Charlottesville until the first part of August, but the first association that [fol. 202] I had with him was when he appeared at this organizational meeting of our chapter, which occurred late in August and to which I have already referred.

Q. Didn't he, in his effort to organize a group in Charlottesville, make speeches there to those present, asking them to call members of the Virginia Council on Human Relations and to irritate the people who were participating in that organization all that they could?

A. I read in the paper that he did. I did not attend his meeting.

Q. And do you not attribute these telephone calls and the cross-burning to the activities of Mr. Kasper that he stimulated in the community?

A. I attribute it not directly to Mr. Kasper. I think that he aroused local citizens and, in my opinion, the telephone calls that I received prior to September 1 would

be, in that secondhand manner, directly attributable to Mr. Kasper; but, if you recall, he went to Clinton, Tennessee—I do not remember the exact date, but it was about the 29th or 30th of August, at the time school was to open in Clinton, Tennessee, so it was a bit more than a week after that when the cross was burned.

Q. But he left, didn't he, according to the newspaper reports, an organization?

A. The White Citizens Council.

[fol. 203] Q. And now, this legislation which is the subject of this lawsuit was not enacted until long after these occurrences; isn't that correct?

A. It probably was not. Did it go into effect ninety days after passage?

Judge Soper: It was approved the 29th of September.

By Mr. Gravatt:

Q. The Session adjourned on the 29th of September and some of it was so-called emergency legislation and some of it was not. So, the things you have testified to occurred prior to the enactment of this legislation?

A. The legislation was enacted September 29? Sometime thereafter, but that is approximately the time.

Judge Soper: The copy of it shows "Approved September 29, 1956"—all these chapters.

Mr. Gravatt: Yes, sir, I think that is correct.

A. (Continuing) Then, the majority of the harassing telephone calls and the cross-burning occurred before that date.

Mr. Gravatt: That is all.

[fol. 204] Mr. Robinson: Mrs. Edith Burton.

Mrs. EDITH BURTON, called as a witness on behalf of the plaintiffs and being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Where do you reside, Mrs. Burton?

A. 940 North Livingston Street, Arlington, Virginia.

Q. What is your occupation, Mrs. Burton?

A. Housewife.

Q. Have you had occasion in recent times to receive any anonymous communications?

A. Yes, sir.

Q. About when did you begin receiving such communications?

A. About two years ago.

Q. What was it that occurred in point of time related to your beginning to receive these communications?

A. This was two years ago. The Defenders were just—

Q. Can you speak up just a little louder?

A. Two years ago, the Defenders were just organizing in Arlington and were becoming very active. Feeling as [fol. 205] I do on the subject, I wrote a letter to the papers attacking the defense in some of their actions and advertisements. A few days after it was published in the local paper, there were several letters saying, "Mrs. Edith Burton, white NAACP member, ha! ha! ha!"—very short, very nasty in general, but the only content in these letters was that I was a white member of the NAACP. Immediately after those letters, I started receiving anonymous phone calls which continued for sometime. They were quite annoying, quite harassing; and, at the same time, I began to observe writing on bus stops, various obscene remarks. The children on the way to junior high school from my neighborhood go across a foot-bridge; various remarks about me were on the foot-bridge.

Q. Do you still receive communications of this character?

A. I still get the bus stop editorials. I have not had any phone calls now for some time.

Q. Is there any event to which you can attribute the fact that you are not receiving your telephone calls any longer?

A. Well, no. They just sort of dribbled off. I have not done anything really very revolutionary lately.

Q. Over what period of time did you receive these calls? [fol. 206] A. Oh, over nine months or ten months or a year.

Q. Were these calls confined to any particular part of the day?

A. No; they were in the day and in the evening. Some of them were at 3 a. m., until I started cutting off my

phone. The late-at-night calls were a little different. They were always, "Mrs. Edith Burton, are you the vice-president of the NAACP?" I would say, "No," and hang up. I had several of those, but I cut my phone off, at night, of course, after so long a time.

Q. Did you experience any difficulties of this sort prior to the time you took the position in your letter to the newspapers that you mentioned earlier in your testimony?

A. I had always taken this position, but I had never received any of this kind of thing until the publication of the fact that I was a member of the NAACP and white.

Q. And your difficulties commenced at that time, did they?

A. Exactly at this time.

(No cross-examination.)

[fol. 207] Mrs. MARGARET I. FINNER, called as a witness on behalf of the plaintiffs and being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Mrs. Finner, where do you reside?

A. At 6750 North 25th Street, in Arlington, Virginia.

Q. Can you speak just a little louder?

What is your occupation?

A. I am a housewife.

Q. Mrs. Finner, did you have any connection with a suit filed in 1956 affecting the public schools of Arlington County, Virginia?

A. Yes.

Q. And what was your connection with that case?

A. I was the plaintiff in the suit.

Q. Were you one of the original plaintiffs in the suit?

A. No.

Q. Will you state to the Court how you came to become a party to that suit?

A. Yes. When I read in the paper about the persecution of the Orndorffs, I had the feeling that a person should

have the right to go to court, and due process of law, [fol. 208] and so forth, in a peaceful manner without that type of person accusing him, and if he were driven from the case, I would like to be a plaintiff myself, to take his place and establish the same principle. I didn't even know him, but I objected to having someone harassed in the manner he was harassed and driven from proper procedure.

[fol. 209] Q. What steps did you take to become a party plaintiff to this suit?

A. Well, it was a bit difficult, as a matter of fact, because I just read in the paper that there was an attorney in the case named Brown, and when I looked at the Washington phone book and saw the number of Browns, it was two weeks before I found the right one and ask if it was possible to be admitted into the case.

Q. Did he assume the responsibilities of your attorney and represent you in the case?

A. Yes, he did.

Q. Is the man to whom you made reference Mr. Edwin C. Brown, practicing in Alexandria?

A. Yes.

Q. Have you received any anonymous communication by telephone, letter, or otherwise, since you became a party to the litigation?

A. Yes, quite a few.

Q. When did you begin receiving these communications?

A. I don't remember the date, but it was the first time my name was published in the newspaper.

Q. And in connection with what was your name published in the newspaper?

A. As being plaintiff in the suit.

Q. What kind of communications did you receive?

[fol. 210] A. Well, they were most distressing. I don't think any of them could be repeated just like this.

Q. Could you speak a little louder?

A. They were most distressing and insulting and they could not be repeated.

Q. In what way did you receive them, by letter, telephone, or just how?

A. I got two communications in the mail, but they were just either clippings or literature sent by a group called The Defenders—they identified themselves; no one else who called would give their names. They were all anonymous calls and quite understandably so considering what they said.

Q. How frequently did you receive these telephone calls?

A. Very frequently. In fact, one of them was—we got both people who talked to us, people who talked to our children, very small children, and my little girl, for instance, who was six at the time and sounded much younger on the phone—they didn't pull any punches at all in talking to her. She turned over one of the calls to me and they continued to talk to me without knowing that they weren't talking to her, and from the things they were saying to her, I was deeply shocked.

Q. Without saying what they said, what kind of call [fol. 211] was it?

A. Well, it was obscene language, certainly no one should use it to a child or to me, either, but certainly not to a child who sounds like a baby when she answers the phone.

Q. Was this the only conversation upon which the child answered the telephone when such calls were received?

A. No, the children frequently get to the phone before I do. But in most cases the people ask to speak to me. There was the silent treatment type of calling where you would answer the phone and you could hear someone breathing and no one would speak; particularly annoying was one that came at 4:30 in the morning, every morning for about a month.

Q. Did you have an occasion to experience any communications of this character prior to the time of the publication of your name in the newspaper as one of the plaintiffs in the case?

A. No, I didn't. And that is rather surprising because I had been connected with things of this kind and a member of the NAACP for 15 years or so. I never have received a call before.

Q. Did you experience any other difficulties during this period, Mrs. Finner, as not during this specific hearing?

[fol. 212] A. Have you experienced any other difficulty since you became a party plaintiff to the lawsuit?

Q. Yes, sir, on another occasion.

A. Would you explain to the Court just in what this consisted?

Q. Well, a family servant who practically raised me and who is a colored woman came to Washington on an excursion with her husband. She had never seen where I lived. She still is employed after 35 years with my grandmother and she called up and said, "I would love to go back and tell your grandmother what your house is like," and things like that, which she is now too old to come and see for herself. So I went over to Washington and picked up the servant and her husband and brought them out to my house and they came in and they looked it over and went back and told my grandmother.

Without asking any reason whatsoever why these people were here, or assuming whatever they like to assume, somebody hung an effigy in my front yard two days later.

Q. Would you describe that for us?

A. It was a figure of a man with a punching bag for a head and trousers—it looked very much like a man, had a very professional looking noose around his neck, was hung around one of the trees in the front yard.

Q. When did this occur, Mrs. Finner?

[fol. 213] A. Some time in July, about two days after the visit.

Q. About what year?

A. This year.

Cross examination.

By Mr. Mays:

Q. Mrs. Finner, since you had to go to right much trouble in getting into this lawsuit, did you offer to pay any of the costs and attorney's fees in connection with it?

A. Offer? I am not sure. I dealt with the lawyer in the manner that I would deal with any professional man. I don't know exactly words were spoken. But I certainly assumed that we were there at the time and that I would be billed at the time for any services that he rendered me.

Q. Were you billed?

A. I have paid, yes.

Q. To whom did you make payment?

A. To Mr. Edwin E. Brown.

Q. Do you remember about when that was done?

A. No, not the exact time. It was some time during the course of the suit.

Q. Do you have the receipted bill?

A. I think I have a receipt here. I am not sure that [fol. 214] I have it with me, but I have a receipt. No, this isn't it. I have a receipt from Mr. Brown, but I am not at all (sic) that I have it with me.

Q. Would you object to sending that receipt to the court reporter?

A. Not at all, no.

Q. And with the Court's permission have it photostated and return the original to you?

A. I don't even need it, I have a cancelled check at home.

Q. Very well. You paid by the check and you still have the cancelled check?

A. Yes. I think I still have it. It should be kept.

Q. On what bank was that drawn?

A. McLaughlin Bank in Washington, D. C.

Q. About what was that?

A. I would have to look to be sure.

Q. What was the amount of the check?

A. Ten dollars.

Q. How was that ten dollars arrived at? Did he suggest to you that it would be ten dollars, or did you suggest the amount?

A. I think it covers some printing costs. I don't know, I know he had a number of clients. I don't know how [fol. 215] he billed. I just paid what I was billed for.

Q. But that was the total amount that you were billed for?

A. So far. I don't know if I am to pay any more or not.

(The receipt was later filed as Defendant's Exhibit 2.)

Judge Soper: I suspect this is a good time to stop for the day, gentlemen.

Judge Hoffman: Mr. Robinson, let me ask you, before we retire, you have asked a considerable number of questions which deal with social reprisals, in the main. Is it your contention that they in turn lead to the economic reprisals, or are they one and the same for the purpose of this type of litigation?

Mr. Robinson: I think they are pretty much of a similar thing. I think they demonstrate a climate of opinion that exists in Virginia at the present time of such character that a person who permits himself or herself to become permanently identified with an activity that would seek the equal rights of citizens would leave himself exposed to a number of difficulties which would include annoying telephone calls, insulting letters, economic reprisals, and that type of thing, yes, sir.

[fol. 216] (Discussion off the record.)

Judge Soper: Thank you, sir.

Adjourn the Court until tomorrow morning at 10 o'clock.

(At 5:05 p.m. an adjournment was taken until tomorrow, September 17, 1957, at 10 a.m.)

[fol. 217]

September 17, 1957.

The court reconvened at 10:00 a.m.

Appearances: As previously noted.

Judge Soper: You may proceed, Gentlemen.

Mr. Robinson: Mrs. Barbara S. Marx.

Mr. Mays: If Your Honor please, it occurs to me that some of the witnesses for the defendants may inadvertently be in the courtroom and, therefore, would be disqualified. I thought it well to call that to the attention of the Court so we can have them excluded.

Judge Soper: Yes.

Mr. Hill: I looked around and didn't see any.

The Marshal: The witnesses in this case will retire to the hall.

Judge Soper: It won't be necessary for those who have testified, but if there are any witnesses who have not testified, they should retire.

The Marshal: Any witnesses who have not testified in this case, please retire to the corridor.

No response.

Judge Soper: You may proceed.

[fol. 218] Mrs. BARBARA S. MARX, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Will you state your name?

A. My name is Barbara S. Marx.

Q. Where do you reside, Mrs. Marx?

A. 6897 North Washington Boulevard, Arlington, Virginia.

Q. What is your occupation?

A. Housewife and mother.

Q. Did you have any connection with a case that was filed during the calendar year 1956 involving the public schools of Arlington County, Virginia?

A. I was one of the plaintiffs in that case for two of my daughters.

Q. Have you had occasion at any time subsequent to the filing of that action to receive any anonymous communications?

A. Yes; I received telephone calls and letters.

Q. When did you begin receiving these communications?

A. The first telephone calls came on May 18, which was the day after the case was filed, because there had [fol. 219] been a brief story in the *Star* indicating that two of the plaintiffs were white.

Q. In what shape were these communications? By that, will you state whether they were in the form of telephone calls, letters, or just what?

A. Following this story of May 18, there were three or four telephone calls.

Q. Did you receive anonymous communications of any other form?

A. Not then—later.

Q. How much later?

A. On June 1 there was a story in The Washington Post with a photograph of me and my eight-year-old daughter and then we began getting a lot of telephone calls and letters.

Q. Was there anything contained in the newspaper story to which you have testified connecting you with the school case that had been filed?

A. Yes; it was an interview with me saying why I had entered the suit.

Q. And what happened when this story was published?

A. At seven o'clock in the morning the first telephone call came, and my high school daughter, who had to catch a 7:25 school bus, answered it and she hung up right away. I said, "What was that?" And she said, "That was [fol. 220] one of your enemies."

Q. How frequently did these telephone calls come?

A. Those telephone calls were quite frequent all day. Friday, they were not obscene and they were not threatening; they were just disagreeable. They were to the effect that, "Why don't you go back north, you nigger-loving Kike?" These people seemed to assume because of my name I was Jewish, which I don't happen to be. And two or three of the people said, "I hope both your daughters marry n-i-g-g-e-r-s."

Q. Were these calls confined to any particular time of the day or portion of the day?

A. They went more or less through the day. Then, that evening, Jack Orndorff called me. His wife had called me earlier in the day, asking if I was getting calls, because she was.

Q. Who was Jack Orndorff?

A. Jack Orndorff was the other white plaintiff in the case.

Q. Is he the Jack Orndorff who testified here on yesterday?

A. He is. He called me and asked me if I would come down with my younger daughter and spend the evening with him, he thought "misery loves company" and we might be better together, and I went down.

[fol. 221] Q. You mean you went to his house?

A. I went to Jack's house.

Q. Will you state for the information of the Court what, if anything, developed on this day when you went to his house?

A. His mother-in-law had retired upstairs, and Lucille told me that her mother was terribly upset and, shortly after I got there, a clergyman came and Lucille introduced me and explained the situation in my presence to him, about these unpleasant calls and how upset her mother was, and the clergyman went upstairs to where Lucille's mother was. Then, Jack had to go out and I answered the several telephone calls, anonymous calls which were meant for Jack, while Lucille and the clergyman were upstairs.

Q. During this period, Mrs. Marx, did you receive any letters?

A. I received several letters.

Q. Where are those letters now?

A. Well, that is sort of jumping ahead of my story. Those letters were taken Tuesday by the FBI because threats had gotten extreme, and they put each letter in a celophane (sic) envelope and I have never seen them since.

Q. Do you still receive anonymous communications?

A. I still receive letters whenever my name gets into [fol. 222] the paper.

Q. How about telephone calls?

A. That is true, too.

Q. Did you have occasion to receive any communications of this character prior to the time of your identification with the school case?

A. No, I didn't.

Q. Were there any other occurrences associated with your receipt of the telephone calls and the letters?

A. I am not sure I understand your question. There are several comments I could make about this harassment.

Q. During the time that you were receiving the anonymous telephone calls and the letters, did there occur any other thing of an annoying or threatening character?

A. Well, the telephone calls which came on Monday, after the Orndorffs had withdrawn, increased greatly in number and they became obscene and threatening, which they had not been on Friday, and if the Court would permit me, I would like to make comment here about these obscene calls. I do not want to quote them in court, but I would like to say, for a middle-aged woman like me, who has had a college education and moves in a fairly respectable, staid social group, it is a great shocking experience when some unidentified man suddenly gets on the phone and begins asking about my illicit sex relations with black men. It is a terrific shock and surprise, and, [fol. 223] because of the nature of these calls, I had to forbid my eight-year-old daughter to answer the phone and I could not satisfactorily explain to her why she was not allowed to answer the phone, and she was rather resentful and bitter for a period of ten days when I did not permit her to answer the phone.

Q. Mrs. Marx, I show you this paper and ask you to examine it, if you will, and state whether you have seen it before.

A. This is a collection of clippings I took from the Daily Sun in Arlington during the election campaign in the fall of 1955. At that time there were five candidates running—

Mr. Gravatt: If Your Honor please, I think we might see the paper.

Mr. Robinson: I am going to show it to Mr. Gravatt.

A. There are five candidates running—

Mr. Gravatt: I should like to see it before she testifies, please.

(Document was handed counsel.)

Q. Mrs. Marx, the only thing that I am interested in is the item that appears in the lower right-hand corner. What do you know about it?

A. That was one of several advertisements placed in the [fol. 224] Arlington Sun by the Defenders of Arlington, offering \$50 reward for the white membership list of the Arlington branch of the NAACP.

Mr. Robinson: If the Court please, the plaintiffs would like to introduce in evidence the item that appears in the lower right-hand corner on this sheet.

(The item was received in evidence as Plaintiff's Exhibit No. 4.)

By Judge Soper:

Q. What is the date? Do you know what this organization is, the Defenders of State Sovereign and individual liberty?

A. That is a very active, rather small, pro segregation organization in Arlington. They have communicated with me, they have sent me signed telegrams.

By Mr. Robinson:

Q. Mrs. Marx, do you happen to know whether or not the organization to which you have testified is a part of a Statewide organization functioning in Virginia?

A. I am sorry, I do not know.

Cross examination.

By Mr. Gravatt:

Q. Mrs. Marx, I believe you testified that your telephone [fol. 225] calls and the letters that you got begun after a newspaper story on the 18th of May?

A. That is correct.

Q. You had not had any such calls or letters prior to that time?

A. No, I had not.

Q. You have been well known as a person who was promoting and advancing the integration cause in Virginia, have you not?

A. I have.

Q. You are well known in your own community in that respect?

A. Yes, sir.

Q. And you had been well known as a member of the National Association for Colored People, have you not?

A. Well, how public that knowledge was, I don't know. I belonged for about eleven years.

Q. And it has not been any secret that you were a member, has it?

A. It was not a secret, but I questioned whether it was known to these people who called me until the newspaper publicity.

Q. You have appeared in the Legislature on numerous occasions and have participated publicly in behalf of your views in regard to integration in the State, have you not? [fol. 226] A. I have never testified before any committee or before—at the Gray Hearings.

Q. You have not?

A. I have not.

Mr. Gravatt: That is all.

Judge Soper: Thank you.

Mr. Robinson: Mrs. Sarah Patton Boyle.

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Soper: Mr. Robinson, it isn't entirely clear to the Court as to what the Arlington case is that you are talking about and whether there were in this case both white and colored parties.

Mr. Robinson: Will the Court accept my statement?

Judge Soper: Subject to such correction as may be made?

Mr. Mays: Entirely agreeable.

Mr. Robinson: Yes, sir. If Your Honor please, on May 17, 1956, a suit was filed in the United States District Court for the Eastern District of Virginia, the Alexandria Division, seeking the admission to school of both white and Negro children to the Arlington schools in Arlington County on a non-segregated basis. Some of the original plaintiffs were white, some were Negro. At a later time, additional plaintiffs, all of whom I believe were white, were intervened. This was about July of 1956. Since that time, as a matter of fact, on one day during last week, a few additional plaintiffs were intervened. These happened to be Negroes. At the present time, therefore, there are, and from the beginning there always have been, infant

plaintiffs both white and Negro in the case, all seeking admission to school on a racially non-segregated basis.

Judge Soper: What is the style of the case as it appears in court, if you know.

A. Yes, sir. The case is Clarissa S. Thompson, and others v. The County School Board of Arlington County, Virginia, et al.

Judge Hoffman: That is the same case that has gone to the Circuit Court of Appeals, certiorari was refused by the Supreme Court, and it then went back to Judge Bryan and I assume is the same case that he acted on last Saturday.

Mr. Robinson: That is correct, sir.

SARAH PATTON BOYLE, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

[fol. 228] Direct examination.

By Mr. Robinson:

Q. Will you state your name?

A. Sarah Patton Boyle.

Q. Where do you reside, Mrs. Boyle.

A. Charlottesville, Virginia.

Q. What is your occupation?

A. Housewife.

Q. Speak up a little louder, Mrs. Boyle.

A. Housewife.

Q. Have you had an occasion at any time to author any articles published in the field of race relations?

A. I think the first letter to the editor that I wrote on that subject was in either the latter part of 1950 or the early part of 1951. For the first three years following that, I wrote a great many letters to the editor, but I don't think anything in the—

Q. To the editor of what publication?

A. Several newspapers, the Norfolk Virginia Pilot and the Richmond Times Dispatch, and one or two in the Charlottesville Progress. I don't think I published any national articles on this subject until nineteen—I don't remember

the exact date, but several years later, 1953 at the earliest, I think.

[fol. 229] Q. In what publication did this article appear?

A. This was in the Christian Century, the first one I printed.

Q. What, if any, other articles did you author that were published?

A. Well, I didn't author anything else on the national basis until the Saturday Evening Post article.

Q. When was this?

A. This was in 1954, I think, or possibly 1955. I don't know, I am sorry about the date, I am very vague about dates.

Q. Have you at any time since the publication of these letters and articles received anonymous communications?

A. Well, they weren't all anonymous. I don't know exactly how many anonymous letters specifically I received but I have received over 200 letters of various kinds ranging all the way from fairly reasonable argument to extreme insult and obscenity and threats of violence.

Q. Are you still receiving letters of that character?

A. Yes, I am afraid I am.

Q. Have you received communications of any other type during this period?

A. Yes, sir. I constantly receive telephone calls as well.

[fol. 230] Q. What character of telephone calls have you received?

A. The same type, all of the whey from extreme obscenity to warnings that I should leave town as soon as possible, and threats to have my husband fired and things of that nature.

Q. What is your husband's employment?

A. He is a professor of the University of Virginia.

Q. Mrs. Boyle, have these telephone calls been confined to any particular part or portion of the day?

A. No, none whatsoever.

Q. How frequently, on the average, do you receive these calls?

A. Well, they range all of the way from one or two a week to six or seven a day or night, as the case may be.

Q. Were there any other occurrences associated with the telephone calls and the letters to which you have testified?

A. Well, a six foot cross was burned under my bedroom window approximately 15 feet from the house.

Q. How long ago was this?

A. This was last August. I do remember the date on that. It was August 29 of last year.

Q. Any other circumstances of similar character?

A. Nothing else of that character. Everything else has [fol. 231] been verbal. I have received public embarrassments of various kind and I have also been attacked in the press, especially local. Some of these local expressions in the press were very humiliating of a nature. Statements, such as I was not a desirable member of the community and would I please leave town, and insinuations of my motivation in connection with the expressions I had made.

Q. What type of personal embarrassments that you mentioned a moment ago did you experience?

A. Well, I have had acquaintances to cease to speak to me in very conspicuous, and I have had to give up going to parties of any size except a very small circle of friends because there is always at least one person there, and sometimes several, who makes it his business to make me wish I had stayed at home. Letters have been written to the vestry of the church to which I belong requesting pressure be put on me to resign my membership, and I have been generally made to feel that my presence almost anywhere I go is objectionable to at least some of the people there. This bills up to a situation that involves a good deal of personal distress. I have only received one threat of extreme violence, unless you interpret the cross as a threat of violence. I have received one letter threatening to have my house bombed, with a local postmark. But other than [fol. 232] that, my letters have all been vague threats, the ones that have been threats and the telephone calls have also been vague suggestion that I had better leave town and the sooner the better. I have received a card with a picture of a person riding on a rail, tarred and feathered, and the caption "I hear you are leaving town," and signed by a leader of the local white Citizen Council. Things of that nature.

Q. Mrs. Boyle, did you experience difficulties of this sort prior to the time that your letters and your articles were

published? Did you encounter difficulties of that character prior to that time?

A. No, nothing of that sort at all. On the contrary, I am a friendly kind of a soul and I think that most people respond to people who like them. I certainly have never at any time before had any experience that would seem to imply that I was not totally welcome anywhere that I wished to be.

Cross examination.

By Mr. Gravatt:

Q. Mrs. Boyle, what was the type of the article that you published in the Saturday Evening Post, please?

A. Well, my original title under which it was written and submitted was "We are readier than we think." As some of you gentlemen may know, and others now, magazine [fol. 233] editors reserve the right, just as newspaper editorials reserve the right, to headline the newspaper articles. Magazine editors reserve the right to title stories and articles as they please. This is a great source of torment to every author that I know. So the editors of the Saturday Evening Post concluded that my article would get a wider reading if it were titled "Southerners Will Like Integration." But my original title was "We are readier than we think." And the whole tone of the article was equally mild and inoffensive, I believe.

Q. You of course realize that you were writing on quite a controversial subject?

A. Yes, indeed.

Q. And to some extent I presume you were prepared to have some difference of opinion about the approaches?

A. Yes, indeed.

Q. You mentioned the cross being burned. Did that occur at the time that John Kasper was in Charlottesville undertaking to organize what he called the White Citizens Council there?

A. No. This was after Mr. Kasper left.

Q. How long after he left?

A. Well, not very long. I don't remember exactly how long, but not too long.

[fol. 234] Q. Do you or do you not attribute, in part at least, the harassment, telephoning, and the cross burning to the activity of Mr. Kasper and his group of followers whom he left in Charlottesville? Do you attribute it to him and his activities and his followers?

A. Well, I attribute the cross, at least in part, to that, yes. But the other attacks, some of the most severe attacks, I received before Kasper was even on the scene. In fact, they were immediately following my article in the Saturday Evening Post.

Q. And, actually, that harassment that you have experienced has resulted from the article, has it not?

A. In volume, yes, I would say so—most of it in volume.

Mr. Gravatt: That is all.

Mr. Robinson: I would like to ask the Court to indulge counsel for the plaintiff for just a couple of minutes. If we may have a brief adjournment, we may be able to shorten the proceedings.

Judge Soper: Very well. We will recess. For the accommodation of counsel we will take a brief recess.

(Recess.)

[fol. 235] Judge Soper: Very well, Mr. Robinson.

Mr. Robinson: May it please the Court, we have several additional witnesses who could testify to the same matters to which the last group of witnesses have testified. Some of those witnesses are not as yet here. In addition, their testimony might in any event be considered cumulative. We would like at this time to move to the presentation of evidence on other issues in the case, but we would like to reserve for the time being the right to put on these witnesses before we rest our case. We would not like to rest our case at this time.

Judge Soper: I think the order of proof is a matter within the discretion of counsel.

OFFERS IN EVIDENCE

Mr. Carter: At this time, if the Court please, we have a list of newspaper items which, in accord with our pretrial agreement, we furnished to counsel for the other side. We

would like to introduce these for two purposes: One, to indicate that there was general knowledge and it was generally known in Virginia by publication in these newspapers that these laws which are under attack in this court were aimed at curbing the activities of the plaintiff; and, secondly, we would like to introduce them to indicate that persons identified with integration or with the National Association for the Advancement of Colored People were subject to reprisals, that there were publications of threats [fol. 236] of economic boycotts, and so forth, and to indicate generally the climate of opinion in this state adverse to our aims and purposes.

Shall I proceed?

Judge Soper: You may proceed with your offer, yes, of course. Have you a separate list of these publications?

Mr. Carter: I have listed them, but—

Judge Soper: Do you need it for yourself?

Mr. Carter: Yes, sir. We can have a list made later.

Judge Soper: It might be convenient for everybody to have it, but proceed in the meantime.

Mr. Carter: Very well.

First, we would like to introduce the September 4 article of the *Norfolk Journal and Guide*—

Judge Soper: September 4 of what year?

Mr. Carter: September 4, 1954. Page 1, columns 2 and 4, headline marked: "Homes Bombed Again." Continuing on page 2, column 5. The same newspaper, September 25, 1954, page 1, column 6, headline: "Coronado Punster Sends Hearse for NAACP Head."

The same newspaper dated June 25, 1955, column 4, item titled: "Virginia Welcomes Hate Group." That is continued on page 2, column 2.

[fol. 237] The same newspaper, dated August 6, 1955, page 1, column 3, continued on page 2, column 2, the headline: "Veteran Gets Note From Klan."

The same newspaper, dated September 17, 1955, page 1, column 2 continued on page 2, column 3, headline: "Hate Campaign Against NAACP is Intensified."

The same newspaper, June 2, 1956, page 1, column 5, item headlined: "Burning Cross Doesn't Scare Virginia Minister."

The same newspaper, June 9, 1956, page 2, column 1, headline: "Citizens' Council to be Organized in Newport News."

The same newspaper, page 1, column 2, continued page 2, column 7, the date August 4, 1956, headline: "Racial Issue Regarded Cause of Cross Burning."

The same newspaper, August 11, 1956, page 1, column 7, headline: "Legality of Anti-Labor and NAACP Law Queried."

The same newspaper, September 1, 1956, page 2, column 4, headline: "Cross Burns at Meeting."

The same newspaper, September 8, 1956, page 1, column 6, continued page 2, column 4; the headline of this article is: "Professional Race Baiters Lead Integration Defiance."

The same paper, column 8, page 1: "Mrs. Boyle Not [fol. 238] Frightened by Mobsters."

The same newspaper, column 1: "Proposed Assembly Virginia Legislation Aimed at Local Group."

Let me say, if I may, that this edition is called the National Edition of the *Journal and Guide*, that I have just alluded to. I am referring now to the Home Edition, September 8, 1956, of that newspaper at page 1, column 2, title: "Local Legislators Back Bill to Crush NAACP."

The same newspaper for September 22, 1956, page 1, column 1: "Charlottesville Lawmaker, Senator McCue Speaking."

The same newspaper, September 29, 1956, page 1, column 8: "Night Riders Hang Leader in Effigy."

The same newspaper for October 6, 1956, page 1, column 3, continued on page 2, column 1, headline: "Threat Fails to Frighten South Norfolk NAACP Head."

October 13, 1956, same newspaper, page 1, column 1, the headline is: "Richmond Chest Bows to Bias, Drops Urban League."

This is the last item from this newspaper. It is dated April 13, 1957; it is page 1, column 5, continued at page 2, column 5; the headline is: "Terror Stalks Black Belt."

The next series of items are from the *Alexandria Gazette*. [fol. 239] The first one is August 30, 1956, page 1, column 8, continued on page 2, column 5; the headline is: "NAACP Controls Map."

The next one is dated September 8, 1956, page 3, column 1, headline: "Six Measures in Virginia Rap NAACP."

The next one is September 11, 1956, page 1, column 8, continued on page 2, column 5, headline: "Public Hearings End on School Issue."

September 22, 1956, page 1, column 8, continued page 2, column 4, the headline is: "Assembly Winds up Meeting After Voting For Stanley Measures."

The next newspaper is *The Lynchburg News*. The first item is dated August 19, 1956, page C-8, column 3. The headline is: "Citizens' Council Urges People's School Strike."

The next one is dated September 21, 1956, page 1, column 7, the headline: "Assembly Applies Pressure to Wind up Special Session."

Again September 21, 1956, page A-2, column 4: "Senate Committee Okays Cut-off Bill."

The next is September 22, 1956, page 1, column 3, headline: "Thomson Bill is Approved by Senate."

The next newspaper items we are submitting are from [fol. 240] the *Virginian-Pilot*. The first one is dated July 24, 1956, an item on page 1, column 8, headline: "Six Whites Ask Integration in Arlington."

The same newspaper, dated August 7, 1956, page 1, column 6, continued page 8, column 2, the headline: "Anti-NAACP Laws Passed in Halifax."

The next is August 28, 1956, page 1, column 8, headline: "NAACP Curb Sought by Legislators."

The next is September 6, 1956, page 2, column 4, headline: "Bill Offered to Curb Racial Unrest Activity."

The next is September 19, 1956, page 1, column 5, headline: "NAACP Bill Reported Out by Committee."

The next is dated September 21, 1956, page 1, column 6, continued page 10, column 3, headline: "Anti-NAACP Package is Passed by House."

The next is September 22, 1956, page 1, column 5, continued page 9, column 6, headline: "New Laws Aimed at NAACP Enacted Provide For Investigation Committee."

We would like to introduce the same edition of the newspaper, the editorial page, column 2, the editorial entitled: "Unworthy of Virginia Tradition."

The last of the *Pilot* is dated September 30, 1956. This is Section B, page 1, column 4: "Southside Negro Tells of Threat."

The last series of items are items from the *Richmond* [fol. 241] *Times-Dispatch*. The first is dated August 26, 1956. First is page 1, column 8, the headline: "One Hundred Bills Await Assembly," and the same edition, page 1, column 8, continued page 10, column 5, the headline: "Byrd Bids State Fight Integration."

September 5, 1956, page 1, column 6, continued at page 9, column 1, headline: "Stanley Aides Put Teeth in Fund Bill."

September 6, 1956, page 1, column 6, continued page 8, column 8, headline: "Six Bills Aimed at Racial Group."

September 11, 1956, page 1, column 7, continued page 9, column 1: "Six Measure to Restrict Racial Groups Argued."

September 18, 1956, page 2, column 8, headline: "NAACP Bills Face Action Here Today."

September 20, 1956, page 2, column 1, headline: "Committee Approves Bill to Establish Unit to Probe Racial Groups."

September 21, 1956, page 1, column 7, continued page 2, column 1, headline: "Senate Unit Votes Racial Group Bill," and the editorial page, page 14, column 1: "Highly Dubious NAACP Bills Need Much More Analysis."

The last item is September 22, 1956, page 1, column 7, continued page 3, column 1, headline: "Senate Votes For [fol. 242] Group to Probe Racial Violations."

The same newspaper, page 1, column 5, continued page 2, column 1, headline: "Anti-Integration Course is Charted by Assembly."

From the editorial page, page 10, column 1, headline: "NAACP Bills Still Bad."

That is all.

[fol. 243] Judge Hoffman: Are you offering those in evidence?

Mr. Carter: Yes, sir.

Mr. Mays: If your honors please, it was agreed at pretrial that we would raise no question as to the publication of the article which were submitted to us as of a certain time. There are, however, a number of newspapers which

have been presented and of which copies were not delivered to us. We do not want to take advantage of that situation, but we want an opportunity at recess to examine them and then maybe we will make the same concession that we did before.

Judge Soper: Yes, sir.

Mr. Mays: Shall I enumerate those?

Judge Soper: I think it would be well. Have you got a list that you can hand them that would serve the same purpose?

Mr. Mays: We have just noted them as we went along, but we can prepare a list.

Judge Soper: Yes, indeed, give them to them at once, Mr. Mays.

Mr. Mays: The issues of the Alexandria Gazette, we have only one: August 30.

Judge Soper: To save time, Mr. Mays, I have no doubt that counsel will furnish you with those and I suggest at [fol. 244] recess that you give them this list or tell them which ones they are and they will furnish them so that will take care of the particular papers that you have in mind.

Mr. Mays: Yes, sir.

I wish to object to the introduction on the grounds, first, that they are irrelevant; and, second, on the obvious ground that the news articles, those parts of the paper which are put in as news articles, are strictly hearsay. The authorities on that are unanimous so far as I know. And that the editorials are purely opinion evidence. We object to the introduction of any of them on the grounds stated.

Judge Soper: Do you object, Mr. Mays, to them being received simply to show that such articles were published?

Mr. Mays: I do, sir.

Judge Soper: I suggest that there is a difference, of course, between accepting these articles of proof of the incidents which are mentioned in the articles. I suppose we would have no difficulty about that. I do not know that they are offered for that purpose. But the fact that these articles were published and then there was a public discussion, of which everybody in these communities were aware, discussion which related to racial controversy and the disputes, may possibly have some bearing on the other evi-

[fol. 245] dence that has been introduced here as provoking the criticisms and threats and one thing and another of people who took part in the controversy and the disputes. Do you care to say anything about that aspect of the matter?

Mr. Mays: No, sir. We preserve our objection, but I do not wish to argue it, sir.

Judge Soper: Does counsel have anything to say for the plaintiffs with respect to this matter?

Mr. Carter: Just this point, Your Honor. Many of these items indicate what these bills were for and were known as. There is no legislative history.

Judge Soper: To be specific, one thing that you put them in for, obviously, is to show that the bills were aimed at the Association.

Mr. Carter: That is right, sir.

Judge Soper: As indicated by some of those headlines. Do you offer them as proof of that fact?

Mr. Carter: No, sir. We offer them as is as evidence of the fact that these articles were published, that there was generally a belief that this was the purpose of these laws, and that the other items which we have referred to here were published in the newspapers, not that these facts actually occurred, as Your Honor indicated, but to show that there was some relation between the persons participating in the Association who were publicly known and the re-[fol. 246] prisals and incidents and disagreeable incidents to which they were subjected. That is the purpose of the offer. It comes in general to show a climate of opinion in Virginia involving persons identified with our organization.

Judge Soper: I suggest on behalf of my colleagues, if they agree on this, that the matters be received subject to exception. We have had no opportunity to confer about this matter and it may be that these articles are admissible for some purpose, but not for all purposes, and it would serve a useful purpose, I think, if counsel who offer them would give us, at some convenient time while this evidence is still being considered, a statement of precisely why they are offered and to what points you think that they are admissible. Give a copy of that of course to your opponents so they may have an opportunity to make any counterstate-

ment that they desire to make. My impression at present is, and if I am wrong counsel will correct me for the defendants, that they object to them being put in for any purpose. Is that correct?

Mr. Mays: That is correct.

Judge Soper: Very well. They may be received. I think we won't take time at this moment for them to be marked by the Clerk. That can be done at a later time. [fol. 247] But they are marked now merely for identification and received subject to exception. I would like counsel to make a carefully prepared statement for what purpose they are offered.

Judge Hutcheson: I suggest that counsel pass them over to the Clerk and if possible have them arranged in the order in which they may be numbered consecutively in the record.

(The documents were filed and marked Plaintiffs' Exhibits 5.1 through 5.41 for identification.)

[fol. 248] THURGOOD MARSHALL, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Robinson:

Q. Will you state your name?

A. Thurgood Marshall.

Q. Where do you reside, Mr. Marshall?

A. 409 Edgecomb Avenue, New York City.

Q. What is your profession?

A. I am a lawyer.

Q. What is your occupation?

A. At the present time I am director counsel of the NAACP Legal Defense and Educational Fund, Incorporated.

Q. One of the plaintiffs before the Court here today?

A. Yes, one of the plaintiffs.

Q. How long have you held that position?

A. I have held that particular position since 1952.

Q. Were you identified with NAACP Legal Defense and Educational Fund, Incorporated, prior to 1952?

A. Prior to that time, from 1940 to 1952, I was special counsel of the NAACP Legal Defense and Educational [fol. 249] Fund.

Q. Mr. Marshall, will you understand that in view of the length of the name of this plaintiff that hereafter when I use the term "Legal Defense" I am speaking of NAACP Legal Defense and Educational Fund, Incorporated.

A. I will so do.

Q. When was Legal Defense organized?

A. 1940.

Q. Is it incorporated or unincorporated?

A. It is incorporated under the non-profit membership corporation laws of the State of New York.

Q. Do you have with you a copy of the certificate of incorporation of Legal Defense?

A. I do.

Q. Is this it?

A. That is it.

OFFERS IN EVIDENCE

Mr. Robinson: If the Court please, I would like to offer the certificate of incorporation of Legal Defense in evidence on behalf of the plaintiff.

(The document was received in evidence as Plaintiff's Exhibit No. 6.)

By Mr. Robinson:

Q. Mr. Marshall, does Legal Defense have any by-laws? [fol. 250] A. Yes, we have by-laws.

Q. Do you have any copy of the by-laws of Legal Defense?

A. Here are the by-laws.

Mr. Robinson: If the Court please, I would also like to present in evidence a copy of the by-laws of Legal Defense.

(The document was received in evidence as Plaintiff's Exhibit No. 7.)

By Mr. Robinson:

Q. Mr. Marshall, has Legal Defense complied with the requirements of Virginia law relative to the admission of foreign corporations to function in the State of Virginia?

A. Yes, we did that some time recently, I think it was last year. I don't remember the exact date.

Q. What, if any, is the connection between the organization known as the National Association for the Advancement of Colored People and Legal Defense, sir?

A. They are two separate membership corporations, both organized under the membership laws of the State of New York, but they are separate corporations.

Q. Has this been so since 1940 when Legal Defense was organized?

A. Yes, that is so.

[fol. 251] Q. Was there ever a time when each organization had common offices?

A. Yes.

Q. Would you explain to the Court just when this was, what it was, and when it ceased to be the fact?

A. Well, when the NAACP, the Legal Defense Fund, was first set up in 1940, there were officers, directors and the members of the executive staff who held office, et cetera, in both organizations. For example, Mr. Spingarn, Arthur B. Spingarn, was president of both organizations; Mr. Walter White was executive secretary of the NAACP and he was secretary of the Defense Fund. I was special counsel of NAACP and also special counsel of the Defense Fund. A sizeable group of directors of the Defense Fund were also directors of the NAACP. It was also true that during that period some of the executive officers like Mr. White and myself drew salaries from both organizations. That has progressively changed to the point that as of today there is not a single director that holds office on both; there is no officer of one that is an officer of the other or a director; and there is no member of the staff of the Legal Defense Fund that is also a member of NAACP. That has grown up over a period of years from 1940 until last year. There is no connection. No person that holds office with both, except that I assume that many are members of both. [fol. 252] Q. Mr. Marshall, what are the basic aims and objectives of Legal Defense?

A. The basic aims, purposes, of the Legal Defense are to render legal assistance and legal aid to Negro people whose rights are being denied them, particularly rights guaranteed

by the Constitution of the United States; to carry on an educational program giving facts on the situation; to do research, legal and scientific, in the field of race relations; and to disseminate that information and to do legal research and to publish that legal research. That is about the sum and substance of what we do.

Q. What is the organizational structure of Legal Defense that has been erected for the accomplishment of these objectives?

A. We have a board of directors, we have a president, a vice president, secretary and a treasurer; we have a Legal Staff consisting of lawyers and research people; we have no branches, no units anywhere in the country, the only office is in New York City.

In addition to the full time staff we have in New York, we have lawyers in several sections of the country on what we call a retainer basis, and, in addition to that, we have about a hundred volunteer lawyers throughout the country that come in whenever we need them. But it is not [fol. 253] operating in the country in the general sense that most organizations operate, it operates out of New York City.

Q. Do you have, in any place in the country, any representatives of Legal Defense other than attorneys who may be connected with it on a retainer basis?

A. That is the only one—the lawyers would be the only ones, except it so happens that the present president resides in Boston, Massachusetts.

Q. Mr. Marshall, what are your duties as director and counsel of Legal Defense?

A. Well, the board charges me with the responsibility of keeping the work within the policy adopted by the board moving along, with general supervisory powers over the staff and the other people working people working for us.

Q. Just how does Legal Defense go about the execution of this program that you made reference to a few minutes ago?

A. Well, it operates more or less in this fashion: We get either a letter or a telephone call or telegram from either a person or a lawyer saying that they have got a problem involving discrimination on the part of race or color and it

appears to be a legal problem. Then the question is as to whether or not we will help. If it is a worthwhile problem, we look into it. The majority of the letters we get from [fol. 254] prisoners in penitentiaries we have reached the point, after years, where we can look at them and tell whether they are worth bothering about, and if they are we will look into them. If the investigation conducted either from the New York office or through one of our local lawyers reveals that there is discrimination because of race or color and legal assistance is needed, we will furnish that legal assistance in the form of either helping in payment of the costs or helping in the payment of lawyers fees, and mostly it is legal research in the preparation of briefs and materials of that type. We are getting calls all the time.

Q. Mr. Marshall, I believe you testified that you have a staff of attorneys in New York City?

A. We six full time lawyers.

Q. Are they permanently stationed there?

A. They are permanently stationed in New York. They might go out on assignment.

Q. How many employees do you have stationed outside of the City of New York?

A. We have four lawyers that are on a retainer basis: One in the District of Columbia; one in Richmond, Virginia; one in Dallas, Texas, and one in Los Angeles.

Q. Is the program to which you have made reference executed in any way other than by the attorneys concerning [fol. 255] whom I have just been inquiring?

A. Well, we carry out our program either through them or through letter writing or telegrams, or telephone calls, transmitting to them the legal information they want, the research materials, or the money they need. It is done through the mails or by telephone.

Q. Are there any other ways and means whereby communications are had between the various representatives of Legal Defense?

A. Well, sometimes we send a lawyer direct, like they sent me to Little Rock week before last and they are going to send me there again this Friday. But that will be by plane.

Q. Do you have any requirements establish by resolution or otherwise pertaining to the character of activity in which Legal Defense may become interested?

A. Well, may it please the Court, we have had considerable discussion among our lawyers and in the realm of legal cases we have established over a period of years a policy and a program, and on last year we codified it because questions were being raised, and we restated the policy. The policy is that insofar as legal cases are concerned the staff is prohibited from taking any case unless the case is referred to us by either the party directly in interest or by the parties' lawyer; that if a case is [fol. 256] referred to us by any organization, including the NAACP we shall advise that organization that unless we are requested by the party or the lawyer, we will not operate. And the last portion of the instruction says that once the case is in process after the lawyer-client relationship has been established, that from then on the lawyer is controlled solely by the canons of ethics and by nothing or anybody else. So that lays at rest, so far as their operating program is concerned, any of the discussion that has been going on among the people in the community.

Q. Is that the current practice and policy?

A. That is the policy that has been effect ever since I have been there and it is also now stated on paper.

Q. Mr. Marshall, are you familiar with the organization known as the National Association for the Advancement of Colored People?

A. I have known about the NAACP since 1931.

Q. Do you know when that organization was organized?

A. Officially, it was organized around 1909 and was incorporated in 1911.

Q. Was it, prior to the year 1940, engaged in activities in the field of race relations?

A. Yes, it was.

Q. Why the program of Legal Defense in view of the activities prior to 1940 of the National Association for the [fol. 257] Advancement of Colored People?

A. Well, since so far as the portion of the work of NAACP, I am familiar with the legal work. Prior to approximately 1933 the legal work was all done by volunteers.

Mr. Spingarn was chairman of the Legal Committee. They used a lawyer such as Mr. Morefield Story, Mr. James Marshall, that worked completely on their own, and in the New York office there was only for a period of a short time (some years back, I don't know) one lawyer; and starting around the early '30, Dean Charles H. Houston was taken on the staff of the NAACP as a special counsel and then began the more formalized help and assistance in law school. From, I think it was, '33 or '34 until '36, he was, by himself and then he got an assistant, and he left in '38 and ran along with one or two people. In 1940, the Legal Defense Fund was set up for several reasons: The important reason was the feeling of need for setting up an organization that would merely give aid and assistance in legal cases and not be involved in anything else but that, and to be put into the hands of lawyers. It was set up in 1940 and it has been running ever since along those lines.

The main distinction between the two organizations, as I see it, is that the Legal Defense Fund does only legal and educational work and to have nothing to do with lobbying or influences on legislation.

[fol. 258] Q. At this point, Mr. Marshall, let me ask you this. In addition to its litigation activities, what, if other activities does Legal Defense engage in?

A. Well, members of our staff, and myself, do considerable public speaking and lecturing in colleges and universities throughout the country on varied subjects connected with either the law, constitutional law, civil rights or the race problem in general. And it goes not only for in this country, but sometimes we go up into Canada.

Q. I believe you have already testified that a substantial part of the Legal Defense activity consists in legal research and that type of thing.

A. Considerable of our work is research. As a matter of fact, we have three members of our staff and that is all they do is legal research. They don't try lawsuits.

Q. Getting back to the area of litigation, will you state for the information of the Court what kind of legal cases, Legal Defense, since its inception in 1940, has engaged in?

A. Well, we have been engaged in cases involving the segregation laws insofar as schools are concerned, a recreational facilities—

Q. Just a minute. Was Legal Defense involved in the [fol. 259] Brown case and the Davis case or the other group of cases, four or five in number, decided in 1954 by the Supreme Court?

A. The Legal Defense Fund was definitely involved in those cases, in all of them except the District of Columbia case, and although we technically were not involved in the District of Columbia cases, it happened that the two lawyers in that case are also members of our volunteer corps of lawyers.

Q. What other areas of legal activity?

A. Well, the restrictive covenant cases and cases up to the present time on segregated housing, criminal cases involving confessions, juries that exclude Negroes, and cases of that type; a large number of Army court martials and discrimination cases in the Armed Services during the war and even up to the present time, and transportation, voting. We haven't had any voting cases, I don't think, since *Rice v. Elmore* or *Baskins* case.

Q. Are you familiar with the decisions of the Supreme Court of the United States since 1940?

A. Some of them.

Q. In the field of race relations?

A. Some of them.

Q. Can you recall any important decision by the Supreme Court in the field of race relations that Legal Defense was [fol. 260] not connected with? Were there any such?

A. It is according to who considers it important. I think anyone that was won by some other lawyer would consider it important. But I think that most of them that I can name, if the Court would allow me, I could name some that we were not involved in directly. One was the Henderson case involving transportation on dining cars which was written by Judge Chesnut and that was handled by lawyers representing the Negro college fraternity. But we helped in it because we had a case coming up at the same time.

[fol. 261] Q. What were those cases coming up at the same time?

A. It was the Morgan case from Virginia, the case involving bus transportation, which came up from the Supreme Court of Appeals of Virginia. They were argued, I think, pretty closely together.

Q. Were they cases involving segregated public education at the higher level?

A. I think they may have been *McLaurin v. Board of Regents* and *Sweatt v. Painter et al.*, and the other case, the latest case, is the case of *Terry v. Adams*, if I remember correctly, involving the Jaybird Formula case in Texas. We would not participate in that case, because the plaintiff in the case was well able to finance it himself and I knew he could. I suggested he could and he did.

Q. Mr. Marshall, do you recall approximately how many cases Legal Defense was interested in that have been decided by the Supreme Court of the United States since 1940? Could you approximate the number?

A. It would be approximately forty.

Q. Is there any other organization that you know of that functions in the field of civil rights in the fashion in which Legal Defense functions?

A. I know of no other organization in the country that operates on a national basis, that offers legal assistance [fol. 262] and legal aid in cases involving discrimination against Negroes, other than the Defense Fund; I don't know of any other.

By Judge Soper:

Q. Do you know of any that operate in the State of Virginia?

A. No, sir, I don't know of any one. The nearest thing was some organization that was interested in poll tax cases here—and that was not Negroes, that was taxes involving everybody—but it seemed to be a one-man organization, and he died and I think that is out of existence now. There is none I know of in Virginia.

By Mr. Robinson:

Q. Do you have knowledge of any substantial amount of legal activity in the field of racial civil rights that have occurred since 1940 that Legal Defense has not been identified with?

A. There would possibly be some on a local level that I would not know about but on the national level I don't think so.

Q. Let me ask you this question: Are you familiar with the approximate cost of the average case of the kind to which you have testified?

A. With the exception of one or two criminal cases, I do not know of a single case that has gone to the full [fol. 263] gamut of trial and appeal that has cost less than between fifty and one-hundred thousand dollars, and that, of course, does not include counsel fees, because we very seldom pay them. The best example—and we have been trying to get our accountant to do a cost accounting job on the expenses of the Brown decision, but all I know is that it is a way over \$200,000.

By Judge Soper:

Q. When you say "going through the whole gamut" of the courts, what do you mean by that?

A. I mean some of them go off on a motion and we have a very small record; but where we have a full-size record and it is printed, and an appeal taken in the Supreme Court, and briefs printed all the way—for example, the three-judge court, we do not have that intermediary course of the Court of Appeals. We have one now from Louisiana, on its way up. The record is only fifteen or twenty pages. I would not consider that in that group. The biggest elements of cost are travel expenses for our people that come in to do the voluntary work, and the printing costs. Those are the bulk of our expenses.

Q. When you speak of this minimum amount of \$50,000, you mean a case which has gone all the way from the lower court to the Supreme Court of the United States?

A. Yes, sir, those are the ones I was talking about.

[fol. 264] By Judge Hutcheson:

Q. Did I understand you to say that is exclusive of counsel fees?

A. Yes, sir, Judge Hutcheson. Now, if a lawyer that is working on a case is kept out of his office a considerable time, we figure out approximately what it costs his office to run a day and we pay him a per diem, and sometimes we make a lump-sum. It used to average \$25 a day; it now is

up around \$50. But in one instance, in the Trenton-Six case, we could do no better than pay the lawyer \$100 a day, because he was in and out of town and said he could not run his office at all, and that case lasted, I think it was, seven weeks.

By Judge Soper:

Q. Following out Judge Hutcheson's question, does this estimate of yours, of fifty to a hundred thousand dollars, include the per diem payments to the lawyers that you have just described?

A. Yes, sir, where we pay it. Sometimes a lawyer does not require anything.

Q. But I imagine in most cases they do—they have to live.

A. Well, in most cases, if it please the Court, I just insist on their taking it, and sometimes they send the check back and we have a big argument about it, but I don't think [fol. 265] it is fair for them to bear the brunt of this. In the Brown case, may it please the Court, we had—oh, somewhere between half a dozen and a dozen meetings, where we brought scientists and research people from as far as California into New York, and although they served completely without fee, we had to pay their expenses, and those committee meetings ran around a hundred. Then, we had to get two lawyers in each state to do research, in thirty-seven states, and we had to pay their expenses. It is the expense item that runs up—and we make them send itemized accounts.

By Mr. Robinson:

Q. Do you make the extra payments on the per diem basis that you have made reference to, to your salaried or your retained attorneys?

A. The salaried attorneys, there is no way under the sun for them to get a nickel, even for a per diem. There is no per diem provision for the executive staff; there is a per diem for the clerical staff; and the retained lawyers never get anything more.

Q. Have you had occasion, other than in the Supreme Court segregation cases, to utilize the services and the assistance of attorneys who are not retained or employed by you?

A. Well, very often we get a situation where we want an investigation made, either of local law or of local procedure [fol. 266] dure, to look into a particular case to see whether it is worthwhile or not, and we will call on the services of lawyers throughout the country that we know of, and many of those lawyers south of Virginia work for us on the proviso that we never divulge their names, especially not to their families.

Q. Is this a frequent or infrequent occurrence?

A. It is infrequent.

Q. No, I mean with reference to utilizing the services of attorneys.

A. Oh, we always have our investigation made by an attorney.

Q. Now, do you have occasion to use the services of professional who are not attorneys in connection with litigation activities?

A. We use social scientists, teachers of government, anthropologists, sociologists, if there is some question coming up, especially in these school cases.

Q. Have you had to do this frequently or infrequently in times past?

A. It has been frequently since the Brown case began and it is beginning to taper off. At one time we had a formalized committee of social scientists and they preferred not to work as a committee for the Defense Fund because, they said, as scientists they did not want to be [fol. 267] connected with any organization. They will do a job for us, but they don't want to feel they should be expected to prove it in any particular way; they want to feel free to bring it out the way they want to.

Q. In the anti-segregation school cases of May 17, 1954, the Supreme Court cited the works of certain social scientists. Do you recall whether or not any of the scientists whose works were so cited were scientists who assisted in the preparation of those cases?

A. The only name I remember offhand—we used the books of all those men who were cited, but one particular book was Dr. Kenneth Clark's, and if I remember correctly, Dr. Clark testified in the Prince Edward County case.

Q. How about the Clarendon case?

A. In the Clarendon case. The Supreme Court cited his book or articles he had written. I don't know whether you call it "worked with them," but he testified in behalf of the plaintiffs in those cases.

Q. In litigation activities to which you have testified, has it been necessary to utilize the results of research and the data accumulated by employees of Legal Defense?

A. Well, the research materials that we had, we tried to keep copies of it and we are constantly comparing our research, when we find somebody else is working on the same [fol. 268] subject-matter, and materials go back and forth and a lawyer will write us and ask, "What do you think of this?" And I usually write back and say, "We will be glad to send you what we have on this, if you will send us what you have on the same point," and it is a constant interchange.

We also have groups of law students in many of the law schools that work on isolated projects for us and work them out and we use them. But that is going on daily, constantly.

Q. Now, Mr. Marshall, where does Legal Defense derive its income?

By Judge Soper:

Q. Before you get to that, I was wondering whether you had ever made any estimate of the expense of what might be called an ordinary case. We have had many cases, for instance, in this Circuit, school cases for the most part, which have gone through the trial court to the Court of Appeals and, in most cases, there has been an application for certiorari, in most cases denied. In a case of that sort, where the case stops with the Court of Appeals and then goes back for further proceedings, has there been any estimate of the expense of such, what you might call run-of-the-mine case there?

A. No studies have been made, sir, but I would say [fol. 269] they would run considerably less—I was thinking of less than 2500. The only expense there is, if one of our lawyers, like myself, comes down, there is travel between New York and Richmond, which is very small, and then the only expense is the record and the brief, and that would be

pretty reasonable in a small-size case. I would say that we could get an ordinary case through the Court of Appeals for \$5,000. I would say that.

Judge Soper: Mr. Robinson, I don't know how my colleagues feel, but it is not quite clear in my mind as to what part the Defense Fund plays in the litigation and what part is played by other lawyers, such as appear in these cases. Are you coming to that later?

Mr. Robinson: I can undertake to do it just now.

Judge Soper: I don't want you to disturb the method.

Mr. Robinson: That is perfectly all right. I will see what I can do with this witness on that right now.

Judge Soper: Very well.

By Mr. Robinson:

Q. Mr. Marshall, are you familiar with the activities that went into the Prince Edward County case from the time of [fol. 270] its inception—

Judge Soper: I am not talking about any particular case, but the method by which these cases are handled. Of course, there is no objection to your using a particular case, but I did not have any particular case in mind.

By Mr. Robinson:

Q. Well, rather than take the cases case by case, are you familiar, Mr. Marshall, with the activities that generally have gone into cases which have been handled in the State of Virginia and which did not reach the Supreme Court of the United States, except perhaps that application for certiorari was made and denied?

A. Well, insofar as Virginia is concerned, Spottswood W. Robinson, III is our representative in the State of Virginia on a retainer basis. Either somebody will write to us and say that their rights are being violated, they are a Negro and they live in the State of Virginia, in which instance it is referred to Mr. Robinson, or they might go directly to him, or the lawyer representing the person might go, and in those instances, for the most part, either Mr. Robinson or a representative directly in our office will assist

the lawyer that has already been retained in that case. That is one group of cases.

[fol. 271] By Judge Soper:

Q. Well, stop right there for the moment. Where does this lawyer come from who has already been retained?

A. Of all I know, they have been lawyers that are on the staff of the NAACP State Conference. I don't know of any other instances.

Q. As distinguished from the Legal Defense Fund?

A. Yes, sir. We have no lawyer in this state that is authorized to represent us other than Robinson.

Q. Well, is it a fact that most of these cases, the ordinary cases, are brought by lawyers employed by the State Conference, or are most of the cases ones in which, through your specially retained counsel, the Defense Fund participates? Is there any division between those two groups?

A. No, sir, except so far as this is concerned: If Mr. Robinson tells us it is the type of case that he should help on, I take his recommendation, and he then helps as a representative of our office and lets us know what is needed.

Q. Well, is there usually a communication to the Defense Fund from the cases in which lawyers employed by the Conference are active? Do you always get a report that there has been such a case instituted in a county in Virginia or in a federal court in Virginia? Does that come [fol. 272] to you as a matter of course?

A. It usually comes through Robinson. Sometimes we get it direct, very seldom.

Q. But in every case, is it a matter of discretion or judgment on the part of your regularly retained counsel to go into these cases, or not?

A. He does, and he would have that authority, because we have worked together enough and it so happens that he usually calls me up and I usually agree with what he asks for.

Judge Soper: Well, you seem to have gotten along pretty well together.

Mr. Robinson: So far, anyway, Your Honor.

A. (Continuing) But I think the second type of case would be where the person would write to him. One particular case involved extradition from New York, involving a Richmond man, and before we got involved in the extradition case we called down here and had a check made on it and found out that he at least should be extradited, so we had no problem with it, but it was an investigation of the case. That is done also. But it makes not too much difference whether the case first comes from the client or the lawyer, but it has to come from one or the other, and when these cases come through the lawyers of the State Conference, it makes no difference [fol. 273] that they are lawyers for the State Conference as to whether we will take the case or not. It just so happens that Mr. Robinson and know that very well.

By Judge Hutcheson:

Q. Am I correct, then, in understanding from your statement that in the case in which you locally had the man referred to you, there was a representation by counsel who were members of the State Conference Legal Staff?

A. For the most part. If there are any exceptions, I don't remember them.

Q. In those circumstances, had the State Conference screened the case and determined to accept it when it came to you?

A. I assume they had, but that would have nothing to do with our judgment on the case.

Q. Well, if it came to you from a member of the State Conference Legal Staff, that would be pretty good proof or indication that it had been screened, would it not?

A. It would be, but I would still rely on Mr. Robinson, and not them.

Q. So, then, at that time the Defense Fund agrees to undertake the representation, and then Mr. Robinson joins forces with members of the Legal Defense Staff of the NAACP; is that correct?

[fol. 274] A. No, sir; he joins then with the lawyer for the State Conference Legal Staff.

Q. That is what I meant to say.

A. Yes, sir.

Q. And you compensate only Mr. Robinson?

A. He is on an annual basis, but it makes not a bit of difference whether he handles one or a hundred cases.

By Judge Hoffman:

Q. Have you had instances in which a request has been made to the Defense Fund from lawyers who are not members of the Conference Legal Staff and in which the Defense Fund has participated, without the participation by the Conference Legal Staff?

A. I don't know of any such case offhand in Virginia, other than a poll tax case over in Roanoke, Virginia, where a lawyer requested our assistance and the assistance of the American Jewish Congress and the American Civil Liberties Union, in separate letters, and we met together, and a lot of things happened and the case was never filed, but we were anxious to help in that particular case. That is one, but in other areas of the country we have it every day. We work with lawyers who have had no connection with the NAACP at all, in other sections, and there is one very good example.

Q. Well, you will confer with those lawyers, but I am [fol. 275] speaking about actual participation in a pending case and the appearance, let us say, of Mr. Robinson in either a state or a federal court here in Virginia. Have you had any instances where there has been an actual appearance, say, Mr. Robinson or yourself or any other member of the Defense Fund Legal Staff, where the Conference Legal Staff has not similarly appeared?

A. Well, I could not call them offhand, Judge Hoffman, but I know of instances where Mr. Robinson has taken cases and has had no connection at all with them; they came to Mr. Robinson first. Now, I could not name them offhand, but I know in the past of several instances when he has called me up and said, "Here is the proposition," and they didn't come through the NAACP at all; they came directly to him off the street.

Q. Of course, I don't mean that Mr. Robinson is in any way deprived from practicing law on the outside—

A. Oh, no. These are civil rights of some type. I don't mean his private practice; I mean the civil rights cases.

I know of instances, but I could not put my finger on them exactly, and throughout the country daily we get requests for help from some lawyers we have never even heard about and who have no connection at all with the NAACP.

Q. Of course, until recently, the law firm of Hill, Martin & Robinson existed and you had a situation where the [fol. 276] Conference attorneys were directly connected, certainly in the eyes of the public, with the Legal Defense Fund attorney; isn't that true?

A. Well, Judge Hoffman, yes, sir, that is true, and bear in mind that in the whole problem in having Legal Defense cases in Virginia, starting way back in the late 30's, from that time on, Mr. Hill was here first and then Mr. Robinson and then Mr. Martin. They have grown up in this from the days of Charlie Houston and myself on up to the present time. I would say if they were in organizations that were in competition with or in defiance of each other, that they would still work on a cooperative basis. So, I don't gainsay that at all, but it just so happens that some of the people will come in to Mr. Hill and some of the people will come in to Mr. Robinson, depending on whom they know about from these cases.

[fol. 277] By Judge Hutcheson:

Q. If a client comes to a member of the Legal Staff of the State Conference and they have undertaken his representation, what does he gain by obtaining the services or the aid of the Legal Defense, only the participation of Mr. Robinson as counsel?

A. No, sir, through him—

Q. I understood that he is not paid any additional fee.

A. Whoever the particular party involved is gets the full Legal Staff plus all of these volunteer people from all over the country and I don't believe anybody else could corral that many scientists, lawyers, law professors, law school Dean that would join in giving their legal [fol. 277a] assistance.

Q. You control their activities, that is Legal Defense controls their activities?

A. On a cooperative basis. They are all volunteers, but they will work for us because they believe that there is something that we are doing that deserves their attention.

Q. And the State Conference would not have that service available?

A. I am sure they wouldn't.

Q. What about any other contribution made to the State Conference? You say that a member of that staff is not compensated by Legal Defense?

A. No, sir.

Q. Costs, expenses, and investigation are borne by Legal Defense?

A. Yes, sir. Plus the fact that in the Brown cases, as you remember, they were consolidated so that all of that research that was done on that, a portion of that inured to the benefit of Prince Edward County because one brief was filed for the whole works.

By Mr. Robinson:

Q. Mr. Marshall, from what source or sources does Legal Defense receive its income?

A. We get our income solely from contributions. re- [fol. 277b] ceived from letters sent by the Committee of One Hundred, or through small dinners, small luncheon meetings where contributions are asked for.

By Judge Soper:

Q. What is that?

A. The Committee of One Hundred is a committee of one hundred people organized by Dr. Neilsen, past president of the Smith College, back in 1941 or '42, predominantly of educators and lawyers who joined together for the sole purpose of raising the money to keep the organization going.

Q. What organization?

A. The Legal Defense Fund. Solely. They have no connection with any other organization.

By Mr. Robinson:

Q. Does Legal Defense derive any part of its income from any source than contributions?

A. Solely contributions, no memberships. The only memberships—what I mean, there is no money requirement on memberships.

Q. Do you have with you information as to the total of contributions made to Legal Defense during any recent period?

A. The total income for last year from all over the country was \$351,283.32.

[fol. 278] Q. Was that for the calendar year 1956?

A. The calendar year of 1956.

Q. Are you able to testify as to any connection between the income of Legal Defense and its activities?

A. I didn't get it.

Q. Do you know of any situation in which the income of Legal Defense has been adversely affected by an inability of Legal Defense to function in its normal program in any particular area?

A. Well, the answer to that is that our income was going steadily up in the last four or five years. And the State of Texas got a temporary injunction against this organization from operating in the State of Texas around September of last year and we do not know the connection between it. But we do know there was considerable publicity about it and our income has dropped off.

Q. Slightly, substantially, or to what extent, if you can recall?

A. The income for the first eight months was 152 for 1955, 246 in 1956—this is the first eight months—

By Judge Hoffman:

Q. Speaking of thousands, I suppose?

A. Yes, sir, thousands. And this year it is \$180,000. So as of now, according to these figures, it is over \$60,000.

[fol. 279]

By Mr. Robinson:

Q. Does Legal Defense in its fund raising activities make any representations as to the purposes for which the funds so raised will be extended?

A. Well, whatever letters are written concerning or seeking contributions to the Legal Defense Fund, it is pointed out that we are offering the services of the outfit and we are offering legal assistance in all of the States in the Union and the District of Columbia and Alaska. And I would imagine that the State by State people say, "Well, you are not able to offer services." But we do say that in worthy cases we will help out in a case in Minnesota just the same as we help out in one in Mississippi.

Q. Is that the basis on which you solicit funds?

A. Our mailing is a nationwide mailing except that we didn't mail in Texas while we were under the injunction.

Q. Do you have any information, Mr. Marshall, as to the portion of your income for the calendar year 1956 that you received from contributions from the State of Virginia? First, let me ask you this: Are you able to determine precisely portion of your income was indeed income derived from persons residing in the State of Virginia?

A. Well, we find that a considerable amount of our income from our professional fund raising advisers comes [fol. 280] from people working in Washington who actually live in Virginia. Yet the way our books are kept up it shows that it came from Washington. Now there is no way of settling that at all. There is no way of finding that out.

Q. To the extent for which you know that contributions did come from persons residing in Virginia, what amount of contributions have you received during recent years from such contributors?

A. Well, in '54 the figure was \$1469.50; in 1955, it was \$6256.19. I should point out that a portion of that was a refund that came back on the Prince Edward case which was turned over to us. In 1956 the income was \$1859.20. The income to date in 1956 is \$424 from the entire State of Virginia.

By Judge Hoffman:

Q. Is your organization declared exempt by the Bureau of Internal Revenue for the purpose of taxation?

A. Yes, sir. The contributors can deduct, yes, sir.

Q. Don't the contributors in the main then, as is usual in cases with most contributors, make their contributions towards the end of the year?

A. No, sir. We have watched that, Judge Hoffman. There is a small percentage of people in New York and Chicago who do exactly that. But we find that the Com-[fol. 281] mittee of One Hundred sends out four or five letters a year, never more than five, never less than four, and three of those letters have gone out. There is only one more to go. The fall letter does not bring in anywhere close to the money that they do in the early part of the year. The bulk of the money is from \$5 and \$10 people. There is very little large money there. The money that comes in near the end of the year is all from people up in the New York area. We checked that last year.

By Mr. Robinson:

Q. Do you have any information with you, Mr. Marshall, as to the disbursements Legal Defense has made during the calendar year of 1956 for purposes of this program?

A. Disbursements in Virginia or in general?

Q. In general and in Virginia.

A. In general, for the calendar year of '56, the expenditures were \$268,279.03.

Q. For what period was this?

A. The calendar year of '56. In Virginia, for the calendar year of 1954, the total expenditure was \$6344.39; in '55, it was \$6,000; in '56, it was \$6490, which includes \$250 on the bond in this case; and in '57, the total expenses to date are \$3,500.

By Judge Soper:

[fol. 282] Q. Does that sum include your regular retainer?

A. Yes, sir, it does.

By Mr. Robinson:

Q. Mr. Marshall, are you familiar with the provisions and the requirements of Chapters 31, 32, 33, 35 and 36 of the extra session of 1956 of the General Assembly of Virginia?

A. I am thoroughly familiar with it.

Q. Have you made any study of the statutes with a view to determining how your operations would be affected if you were subjected to the provisions and requirements of those statutes?

A. Well, in the first place, the requirement of listing of our contributors we are convinced that if we release that list that there would be many contributors who would not contribute merely because they couldn't afford to contribute their money.

By Judge Soper:

Q. Are you speaking of contributors to the Defense Fund alone?

A. Yes, sir. I mean, I think the same deterrent to releasing the list of the members of the NAACP applies to the release of the list of contributors to the Defense Fund. I have not checked with them, I don't know, but I think that the form of intimidation—and bear in mind that the [fol. 283] Defense Fund is highly interracial in its setup as to contributors—

Q. By that, you mean you have both races on your contributing list?

A. Absolutely. And the Committee of One Hundred, I would say the majority of them are not Negroes. Our officers and our board are completely interracial, as well as the staff. The releasing of that list would, I am sure, be a great deterrent. There are some people, I am sure, who would say they didn't care.

Q. Are you speaking now of the effect on Virginia contributors or on contributors throughout the county?

A. I believe that if we filed a list of contributors in Virginia that we would lose considerably in every State, every other Southern State, because they would figure that they would be next to have their names released.

By Judge Hoffman:

Q. You do have contributors in the form of foundations of some type occasionally, do you not?

A. We have several foundations that contribute regularly.

Q. They are generally made a matter of general information to the public anyhow?

A. Yes, sir, they are made public and there is no problem with the foundations at all. I don't think that this [fol. 284] would affect them at all. But the bulk of our money comes from the solicitation and not from foundations. The foundation money, with the exception of a sporadic gift here and there, would run much less than \$50,000 a year, much less.

The other point is that if we file a statement showing the source of every expenditure as well, that would be almost completely destructive of our work throughout the South because we have many lawyers in the South that do research for us that couldn't afford, under any circumstances, for their name to be used, and their name would appear on the expenditure list because we sent them checks for their expenditures. As our books are set up, each item is made by name, not only by subject matter. There would be dozens of lawyers that wouldn't be able to work for us.

Q. You are speaking now of white attorneys in the South?

A. Yes, sir. We have found that is especially true during the research on the school cases. In two States, we couldn't find anybody with the information but two people, and they could only give it to us on that condition, that we would never let their names out. And it took them a couple of hundred dollars of expenses and photographing [fol. 285] to get it. Their names would appear on our records.

To other points, the release of membership lists and the release of our books would be detrimental to our working and and (sic) possibly destructive to a great degree.

The other main objection it seems to us is to prevent us from contributing to the expenses of lawsuits for people that are unable to finance their own lawsuits. That would completely destroy the Legal Defense Fund because we

have no other business to operate for, no other reason to operate.

For those three reasons, it seems to me that these bills do harm the Defense Fund. I could pick out other points, but I think those are the major points.

By Mr. Robinson:

Q. Was it your conclusion that a restriction upon contributions in the State of Virginia to legal cases would have effects on your income and your activities outside of the State of Virginia?

A. Well, I know that because of the jump in income I mentioned before that a part of that income came as a result of wanting to help in the school desegregation cases, and if those contributors find out that we can't work on the Prince Edward case any more, they would not have too much reason to contribute. That goes for all over the country. [fol. 286] Q. Is there anything that you want to add to what you have already testified to?

A. I will not fall into that one.

By Judge Soper:

Q. One thing before I forget it. I do not want to interfere with the examination but I think this is pertinent. You have not made it entirely clear to me at least, why you felt it desirable to split the organization work into two separate parts, one the general work and the other the Legal Defense work. That is No. 1 that I need some light on.

The other thing is this: It is quite obvious to everybody that the two corporations have acted together, sympathetically, and I would like to know about that. How is that conducted?

First, why do you feel it necessary to have separate corporate organizations?

A. When the work was going along, there had been several plans that had been made. One was made by the late Nathan Margo, who eventually became a Judge in the District of Columbia, and that was changed back and forth by Charles H. Huston and Judge Hastie and a couple of us,

back and forth. And in that transition period between around '33 and by '40, it was apparent that the Legal Defense work should not have any connection with propaganda, [fol. 287] etc., etc., for influencing litigation, that they should be separated.

The other point was, and there were two or three people in the group not of those I mentioned, that said that there should be some opportunity for the tax-exempt standpoint. And with the two points combined again, Mr. Spingarn and a few of us decided to set up a separate corporation. In all frankness, it was set up with the complete understanding—the NAACP knew we were going to do it and everybody on that committee of incorporators was a member of the Board of the NAACP—and it was thought that they could go along down the line together as two organizations. As of approximately three and one-half years ago, the Treasury Department of the United States Government started an investigation and it was apparent that we should not have any connection at all. That is why the complete severance.

Q. What difference did it make to the Government?

A. Well, I don't know, sir, but when the Internal Revenue people raised questions—

Q. Did it have to do with the taxation question?

A. Yes, sir. Because the NAACP does not have the right for its contributors to deduct their contributions.

Q. Why not?

A. They never qualified before it. They were denied [fol. 288] it. But the Legal Defense Fund does.

Q. In view of the fact that there are certain political activities connected with the NAACP, I suppose.

A. They lobby for legislation.

Q. Necessarily so.

A. Yes, sir. Ours, we don't do it at all.

Q. That throws light on it. But how about your cooperative activities since you have been divorced, legally?

A. As of last year, Mr. Wilkins, as he testified, tendered his resignation. Shortly thereafter, I resigned as Special Counsel of the NAACP. As of early this year, the Defense Fund Board passed a resolution that nobody could be a member of that Board who either was a member or officer

of the NAACP. So that is completely cleared up now and they are completely separated.

In actual fact, as is apparent here in the courtroom and all, Mr. Carter, who was formerly with us as Assistant Special Counsel, is now General Counsel of the NAACP and there is no question in the world that he and I discussed legal matters together, and we work together on lawsuits. There is no question about that, even though he is General Counsel for the NAACP.

Q. Is Mr. Carter General Counsel for the National body? [fol. 289] A. Yes, sir, of the NAACP.

Q. Where are your offices?

A. His office, the NAACP's office, is at Wilkie Building, 20 West 40th Street; the Legal Defense office is 107 West 43rd Street. Several years ago, we rented office space in the NAACP, but we decided that was bad.

By Judge Hoffman:

Q. As a practical matter, I assume that Mr. Carter has free access to the research material of the Defense Fund?

A. Yes, sir. And, in turn, we ask him to do research.

[fol. 290] Cross examination.

By Mr. Mays:

Q. Mr. Marshall, I understand that all of your work so far as the Fund is concerned—and I will distinguish by using that term as contrasted with NAACP—has been through counsel located in the District of Columbia, Richmond, and Los Angeles.

A. Except we will help out other lawyers, but if you mean officially, that is all.

Q. Do those four lawyers handle work in certain districts? Do they have particular district prescribed for them in which to operate?

A. Yes.

Q. Now, what district is comprised in that which is represented by counsel in the District of Columbia?

A. The District of Columbia and Maryland.

Q. And in Richmond, what is the region?

A. The region would be Virginia, North Carolina, and South Carolina, without restriction to go into any other area that he might want to.

Q. And how about the counsel located at Dallas?

A. Louisiana, Texas, Oklahoma, Arkansas, and New Mexico.

Q. And Los Angeles?

A. West of the Rockies.

[fol. 291] Q. Now, do those four lawyers representing those four regions report directly to you or to someone else in your organization?

A. Directly to me.

Q. In all cases?

A. In all cases, but not regularly. The one in Texas reports regularly.

Q. Does the Texas man report to you at any particular time?

A. He tries to report around the end of the month.

Q. Each month?

A. Practically.

Q. Do you indicate to him the character of the reports to be made to you?

A. I just want to know what is going on, and most of it is confidential suggestions as to what is going on, and it involves strategy, what is going on here and there. It is not the type of report that would be made public; it is a lawyer-to-lawyer type of thing.

Q. It is a confidential report?

A. Yes, sir.

Q. Who is your counsel in Dallas?

A. U. S. Tate.

Q. What full name does he go by?

A. I think it is Ulysses Simpson. He goes by U. S. [fol. 292] Tate.

Q. Does anyone else in any of these regions report directly to you, except these four lawyers?

A. Regularly?

Q. Yes.

A. I don't think so. There are people that will write in and tell us what is going on, or what-have-you, but no, I don't think anybody else does.

Q. Well, are there any officials connected with your organization, field representatives or anything of that sort, that report to you?

A. I am glad you mentioned that. We used to have two what we call field representatives. We have changed those titles because, a year or so ago, we set up a division of teacher security to protect Negro teachers who were losing their jobs as the result of the integration fight, and I think we have Dr. Davis, former president of West Virginia State College, and we had one of the field people, Daniel E. Byrd, New Orleans. Mr. Byrd is the assistant to Mr. Davis. The other person in field work was a good scientist and she does research work for the committee. I don't know any others, but I do get regular reports from Byrd.

Q. Do these monthly reports that you get from your regional counsel come at any particular time of the month?

[fol. 293] A. Near the first of the month, because I have to report to the board each month.

Q. Over how long a period has Mr. Robinson been reporting to you for Virginia?

A. Mr. Robinson is in that group that does not report every month. Ever since he has been on retainer—

Q. How long has that been?

A. Can I ask him?

Q. It is perfectly all right to ask him.

The Witness: How many years?

Mr. Robinson: I have been your Southeast Regional Counsel since 1951, as I recall, and I was your special representative in Virginia, as I remember, on a non-reporting basis, from 1948 to 1951.

The Witness: That is as I recall.

By Mr. Mays:

Q. I understand that U. S. Tate, in Dallas, reports to you each month, and for how long a period has he been doing that?

A. Since he has been employed down there. I don't know how long he has been on the staff.

Q. Does he send reports at any time more frequently than once a month?

[fol. 294] A. Oh, surely, if something urgent comes up, I might call him on the telephone.

Q. But he makes the general report only once a month?

A. That is right.

Q. Mr. Marshall, I have before me a photostatic copy of what purports to be a communication to you; it is dated December 6, 1955, from the office of the Southwest Regional Council in Dallas and addressed to you as Director and Counsel for the NAACP Legal Defense and Educational Fund, in New York, and it bears the signature of U. Simpson Tate. U. Simpson Tate is the U. S. Tate to whom you refer?

A. Yes.

Q. I will ask you to look at that and tell the Court whether or not that is one of those monthly reports as to which you have testified?

A. This could be. I am not sure.

Q. You do not deny that it is?

A. I don't make any statement one way or the other, because it appears to be an original letter and, if it is an original letter, it must have been in my files.

Q. Well, do you know whether any examination was ever made of your files?

A. Yes, but not by anybody in Virginia.

Q. I know. Was any photostating done of any material [fol. 295] in the files?

A. Photostating? No, sir.

Q. It was not?

A. No, sir. Copies were made.

Q. Can you tell from this that this is a photostat of the original rather than a copy?

A. Because it has the signature on it.

Q. Yes, I notice it has a signature on it.

A. That is why I assume it was an original.

Q. Maybe it will refresh your memory if I call your attention to some of the things that are stated here. This letter states:

"In compliance with your request, we hereby submit a program proposed legal action during the coming year in the five states that comprise the Southwest Region—"

Mr. Robinson: If Your Honor please, I object to the methods employed by counsel for the defendants in this matter. It seems to me he might show the document to Mr. Marshall and see whether or not Mr. Marshall can identify it. If Mr. Marshall can identify it, it seems to me he can be questioned about it; if Mr. Marshall cannot identify it by reading it, I do not see any useful purpose in Mr. [fol. 296] Mays' reading it aloud to get it in the record in this case; consequently, I object.

Judge Soper: It is a document which has not as yet been identified.

Mr. Mays: That is correct.

Judge Soper: I would be glad to hear from you on that.

The Witness: I can check files in my office. I could get them sent down here. The point is, I don't know whether I ever got it.

Mr. Mays: I wonder if it would simplify things if counsel could communicate with his office during lunch recess and find out? Can he do that?

Judge Soper: Yes, sir, that will be all right, but let us go on to something else in the meantime, unless this is a convenient time to take a recess. Would you like to do that?

Mr. Mays: It is agreeable to me, sir.

Judge Soper: Until two o'clock.

(A recess was taken until 2:00 p. m.)

[fol. 297]

Afternoon Session

Met pursuant to noon recess at 2:00 p. m.

THURGOOD MARSHALL, the witness on the stand at the noon recess, resumed the stand and further testified as follows:

Cross examination (Continued).

By Mr. Mays:

Q. Mr. Marshall, before the lunch recess, I had called your attention to what purported to be a copy of a letter to you from one U. Simpson Tate from Dallas, Texas,

dated December 6, 1955. You were to check with your office and ascertain whether or not you received the original of that letter. Have you made that check?

A. I have, Mr. Mays. My secretary was unable to find the letter, however, she checked with Mr. Greenberg of our office, who was thoroughly familiar with the record in the case of the *State of Texas v. The NAACP and The Legal Defense Fund*, and he says he remembers distinctly that I, in that case, admitted that I had received the letter. So evidently the original of the letter must be in Texas. On that basis, I think it is clear that I did receive it.

Q. This letter begins with this introductory paragraph:

[fol. 298] "In compliance with your request I hereby submit a program of proposed legal action during the coming year in the five states that comprise the Southwest Region.

"ARKANSAS. We have pending a suit recently filed against the Van Buren, Arkansas School Board."

Then, two: "Proposed legal action will include

"(a) A suit against the Pulaski Public Schools. Pulaski is the county in which Little Rock is situated. This suit will not include independent school districts."

Do you know in that instance who the plaintiffs were?

A. Do I know?

Q. Yes.

A. No, but they are in my office.

Q. Do you know whether or not the plaintiffs were actually being represented in those cases as of that time or whether counsel had in mind that they would select plaintiffs in Pulaski in order to bring this suit?

A. No, the plaintiffs in the cases were there and, as I remember those particular cases, the parents had come to Mr. Tate and asked him to take some action to protect [fol. 299] them in their rights. As a result of that, a lawsuit was filed in Little Rock, which is still in court. They did not file a school case in North Little Rock despite the fact that the parents asked for it because Mr. Tate thought

that the School Board would act in good faith, and the School Board did. No suit has been filed in North Little Rock yet.

Q. That was the second item in his communication that I haven't reached yet. And he refers next to other suits and says:

"Suits are being planned for the West Memphis area which is the most difficult area in Arkansas."

Now, in that situation, do you know whether he was actually representing plaintiffs at that time?

A. He wouldn't be contemplating the suit unless he was. I don't know of my own knowledge, but I know that is the way he is instructed.

Q. So in no case did your organization institute or contemplate instituting suit unless you actually had plaintiffs for those suits or actions?

A. We do not in the Legal Defense Fund institute any legal action unless requested either by the plaintiff or the plaintiff's lawyer.

Q. And you do not pick out a particular area or region and say, "This would be a place where we would like to [fol. 300] bring a suit and we will try to get plaintiffs in order to bring that about?"

A. No.

Q. You never do that?

A. I have never done it.

Q. Well, does anyone in your organization ever do it so far as you know?

A. Not to my knowledge.

Q. And never has?

A. Yes, I do know of some information that we received in Texas which could be interpreted as meaning that. I don't believe it was true, but it could have been interpreted as that.

Q. Do you know of any such case in Arkansas?

A. No such case in Arkansas. As a matter of fact, when I was in Arkansas ten days ago, a group of parents of North Little Rock came and asked me to file a lawsuit for them. I told them to go back to the School Board.

Q. Do you know of any such case in Louisiana?

A. No.

Q. The next item in his letter deals with Louisiana and he states:

"We have pending suits against Orleans and St. Helena Parishes."

I take it you had plaintiffs for those cases?
[fol. 301] A. Those cases had been pending about five years. They have been pending the outcome of the Brown case.

Q. Then he states:

"Proposed legal actions will include (a) suits against three remaining liberal arts colleges."

Was that planned strategy to get plaintiffs for those actions or suits, or did you have them already?

A. We had them right after the LSU case. They came in and wanted to know—as a matter of fact, in one of the institutions the faculty and the student body of the institution sent a committee asking us why we didn't do something, and we told them we would not institute a lawsuit without some students.

Q. This is another contemplated suit:

"(b) Suits against several trade schools at the secondary level but owned and operated by the State of Louisiana."

Do you know what he referred to there?

A. Schools of Technology, cases of which have been filed.

Q. And his next item is marked "(c)" and is at the top of the second page:

"Suits against strategically chosen school boards in Eastern Louisiana contiguous to Mississippi."

[fol. 302] Did you understand that to mean, Mr. Marshall, that plaintiffs were in hand for those particular suits?

A. As a matter of fact, I assumed that was true. But I don't believe those cases were ever filed because there

was a gang of cases in those parishes where Negroes were being taken off of the registration books. If I remember correctly, they were so busy with those they never got around to the others.

Q. Do you know whether in those particular instances, that is, those "chosen school boards in Eastern Louisiana contiguous to Mississippi," there were particular plaintiffs, people seeking to be plaintiffs and asking your aid?

A. When I received that, I assumed that Tate would not have been interested other than that.

Q. Did you pursue that to find out?

A. I remember telephoning him about the registration cases there, but I don't remember talking to him about that. I could have, but I don't remember it.

Q. Since you never took any cases for anybody unless you were asked to do so, would not that suggest to you that Mr. Tate was going around looking for plaintiffs in order to use them in "strategically located" areas?

A. At that time I would not call—I mean, when letters came in from these men, I know they knew what the [fol. 303] rules were and I assumed they followed them. I wouldn't expect them in each instance to say, "I have plaintiffs in this case, they have come and asked me and they are interested." I wouldn't expect that, but I assumed that.

Q. You never aided anyone in the bringing of one of these suits unless you yourself had passed on it?

A. Unless I passed on it?

Q. Yes.

A. I wouldn't doubt that some of these lawyers will take up a case that is similar to another case that they have had if they know the policy and without asking me. As a matter of fact, several cases Tate took up, he did without my permission.

Q. You observed that he has enumerated here in this letter numbers of specific locations in which suits were contemplated, but in this instance there was a matter of strategically chosen school boards. You still thought that that involved individual plaintiffs and that he had the plaintiffs already?

A. I would say that I saw nothing there to suspect

to the contrary. I mean, when you read the language it is according to how you read it and what you know about it.

Q. Yes, and I read it my way.

A. Yes, and I read it my way.

Mr. Mays: I should like to mark it in evidence, if Your [fol. 304] Honors please.

(A copy of the U. Simpson Tate letter was received in evidence as Defendant's Exhibit No. 3.)

By Mr. Mays:

Q. You testified on direct examination, and I did not get the full import of it, something about the financing of the Sweatt suit. I take it you were responding to a question concerning one Herman Marion Sweatt?

A. The full title of the case is Sweatt v. Painter.

Q. And that case went to the Supreme Court of the United States, did it not?

A. It did.

Q. And involved his admission into the University of Texas Law School?

A. That is right.

Q. Were you familiar with the means of raising funds for carrying on that litigation?

A. Yes.

Q. Will you state to the Court just what took place?

A. Insofar as the funds were concerned, they were, as I remember, paid for by my office, if I remember correctly. They had a local lawyer. The local lawyer was [fol. 305] named W. J. Durham and I assisted in the trial of that case with about half a dozen other lawyers.

Q. Do you recall what was involved, financially, in the preparation and trial of that case?

A. It was considerable. We blocked it out. It was a huge amount because we had considerable expert testimony from law school professors throughout the country, from anthropologists, from sociologists, and we had a sociologist working full time. I don't know what it cost.

Q. And that case was taken to the Supreme Court of the

United States. Are you familiar with an effort to raise additional money under the Sweatt Victory Fund Campaign?

A. I heard about it.

Q. You are not, yourself, personally familiar with it?

A. No, because they did not want me to be in it.

Q. They told you they didn't want you to be in it?

A. In pretty explicit Texas terms.

Q. That should be emphatic enough. Did you, yourself, understand that they were raising or trying to raise a fund of \$50,000?

A. Yes, I think that was correct.

Q. Did you understand that they proposed entering into a contract—

[fol. 306] Judge Soper: Who is "they"?

Mr. Mays: Anyone.

By Mr. Mays:

Q. —proposed to enter into a contract with Sweatt concerning paying him money to go to the University?

A. I don't know anything about that, of my own knowledge. All of my connections with Sweatt were in the legal case, and after he got into law school. My relationship with him was to explain to him what he had to do. And then when he succeeded in not passing, I had to sort of worry with him then. But any relationship with anything that went on in Texas, whatever was done, I don't know anything about it except I did hear of some funds and I do remember a figure of \$50,000. As to what the fund was, the details, I don't know a thing about it.

Q. Does this refresh your memory? Do you know of any contract entered into with Herman Sweatt whereby he was to be paid an annual salary?

A. No, sir. Well, to be perfectly frank, I heard this in the Texas case. I mean, that is another case.

Q. But you had nothing to do with such a contract?

A. No, sir.

Q. You mentioned there were field representatives in some of these regions. Was there one in Texas?

A. No, sir. Daniel E. Byrd operated in most of the [fol. 307] Southern States. He might have been over in Texas on an assignment. He might have been.

Q. Were any of those field representative reports sent to your office, so far as you know?

A. They reported not regularly. They were sent out on special assignments. They were not out in regular running around. When we needed them to go some place, we asked them to go. Their job was to go in the community and try to work these matters out peacefully.

Q. Was any field representative employed other than the one you just named?

A. Two. It was Daniel E. Byrd and June Shagaloff.

Q. They were field representatives. Were there any assistant field representatives that you sent out?

A. No, sir.

Q. Do you know of one by the name of Edwin Washington, Jr.?

A. Yes, I know him.

Q. What was his function?

A. He works for the NAACP.

Q. Did you know of his activities?

A. Just in general. I know he had no connection with the Legal Defense Fund whatsoever.

Q. And his communications were not sent to you, copies of them?

[fol. 308] A. No, sir. He might have written me a letter about something.

Q. I understand that you had only until very recently been associated with the NAACP itself?

A. As special counsel.

Q. Over what period of time?

A. From 1936 until I severed the connection last year.

Q. What was your function as special counsel?

A. To advise with lawyers and the people in regard to their legal rights and to render whatever legal assistance could be rendered.

Q. Were you asked into those situations by somebody in NAACP or did all of those communications go directly to you?

A. Oh, in the NAACP, as long as I was special counsel,

matters might have been referred to me from anybody on the staff.

Q. Generally speaking, does the Legal Defense Fund operate in the same manner in Virginia as it does in other localities?

A. In much the same except that it depends on the amount of activity that goes back and forth. But the same rules apply.

Q. And you operate precisely the same way irrespective [fol. 309] of the volume of work you have to do?

A. My roles were the same, I would say.

Q. Do you remember what was the largest single contribution received by the Legal Defense Fund within the last year?

A. Within the last year?

Q. Yes.

A. Within the last year, I would say it was \$15,000. That is the largest I think within the last year. I could be wrong. There was a \$50,000 grant that—that was year before last.

Q. Do you remember, approximately, the largest single contribution received by the Fund in the State of Virginia in that period?

A. No, sir.

Q. It would be rather small?

A. I should think from the figures it would be rather small.

Q. Does the Legal Defense Fund solicit contributions in Virginia in the same way it does in other parts of the country?

A. Yes, sir. The letter is sent out by the Committee of One Hundred to a mailing list and the same letter is sent to everybody. Bear in mind, the difference is that in some areas, like New York, Detroit and Chicago, dinners and [fol. 310] functions are held. But nothing like that is done in Virginia. The only solicitation in Virginia is by mail or telegram.

[fol. 311] Q. Now, do you remember when it was that the Legal Defense Fund itself registered before the State Corporation Commission here in Virginia?

A. It was within the past year. I don't remember exactly.

Q. Were you called on by the State Corporation Commission to do that, or was it by your own volition?

A. Well, if we were called on, I don't know anything about it. The reason I did it was, I was not sure whether we were doing business in the state or not and we had this lawsuit in Texas, with a lot of furor about registering, and, since Mr. Robinson was here, rather than having the argument, we decided to register.

Q. It is my understanding that the constitution of the Legal Defense Fund provides that legal aid shall be rendered only to those who are not able to pay for legal services. That being true, how does the Legal Defense Fund investigate the financial condition of various plaintiffs for whom you bring suits?

A. The reason for that is that under the laws of New York we were required to get approval from the state to operate as a legal aid society, under the barratry provisions of New York. Then, after notice to all three bar associations, the County Bar, the City Bar, and the Bronx Bar, the County Bar approved us as a legal aid society. [fol. 312] What I understood by that is, that if a person is not in a position to pay, that we are authorized to represent them. I do not check upon them. There are instances, like for example the cases to equalize teachers' salaries. We took the position that the teachers in a group made enough money to pay for their lawsuit, and in hundreds of cases that were filed, in every single instance that the teachers paid all the expenses except my salary. On cases involving golf courses, we took the position that if a man has time enough and money enough to play golf, he has money enough to finance his suit and we won't take it. We take park cases—one in Texas where we knew the man could pay. So, I think the answer is that we do not make an investigation, but we can tell pretty well whether they are people who are able to finance a lawsuit.

Q. But it is your purpose to represent only those people who cannot afford to pay for litigation?

A. To finance a case all the way up, that is true.

Q. Confining yourself merely to the school cases brought in Virginia, financed by your organization, to what extent, if any, has an investigation been made, as far as you know?

A. Well, I saw the homes of the people in Prince Edward County and I concluded they could not get a case through the Police Court. Now, I may have been wrong. [fol. 313] Q. Did you make an investigation as to the plaintiffs in the Norfolk and Newport News cases?

A. No, sir.

Q. Do you know whether anybody else did?

A. No, sir.

Q. Did you make any investigation to find out?

A. No. I assumed they knew what the rules were.

Q. And the same would be true as to the case in Arlington?

A. I understand since I have been here in this court that one of the plaintiffs, whose name I do not remember, in Arlington County is not a pauper.

Q. When you say "not a pauper," you mean by that reasonably able to take care of counsel fees?

A. Well, I think he would be able to take care of the case through the lower court. I have just found that out.

Q. In fact, counsel fees are underwritten by the Fund, aren't they, as to that plaintiff?

A. No, sir, not by the Fund.

Q. By whom?

A. I assume by the State Conference. I don't know.

Q. As far as you know, the State Conference has obligated itself to take care of them?

A. Well, I have heard testimony yesterday to that effect. [fol. 314] Q. Mr. Banks, wasn't it?

A. I think so. I do not know it of my own knowledge.

Q. Do you know what, if any, investigation was made in Charlottesville of the capacity of the plaintiffs to pay?

A. I know of no instance in which a person has made an investigation to find out whether the party can pay the costs of this kind of litigation.

Q. In response to a question, I think, by Judge Soper, you stated that in some of these cases the expenses ran as high as \$200,000?

A. That is right.

Q. Weren't you referring then specifically to the Brown and associated cases which went to the Supreme Court of the United States?

A. And the Sweatt and McLaurin cases, which were over a hundred thousand, I would say. The restrictive covenant cases were not quite that much. The answer is, I know of no case that cost that much. I am sure about that.

Q. I may be repeating some things that have been said, but I am not sure it is repetitious. Isn't it true that having established the law as to the school cases, these cases that follow after are far less expensive?
[fol. 315] A. Oh, surely.

Q. Will you state again what the current cases are costing in Virginia?

A. In Virginia?

Q. Yes.

A. I don't know. Seriously, I do not. It could not be anywhere near that.

Q. Didn't you testify it would be more like \$2,500?

A. That is what I would think. That would be a guess, or less.

Q. Wouldn't you say that would be reasonably within the reach of fairly well-to-do persons?

A. I would think so.

Q. A person who owned a home of, say, fifteen or twenty thousand dollars?

A. I can't judge it by what they own.

Q. You can't judge it by the amount of their assets?

A. If I knew their assets.

Q. I am merely asking whether that would mean anything to you if you knew that?

A. If I knew he had a \$15,000 home free and clear, he would be in pretty good shape.

Q. And it is easy to find out whether a person has such [fol. 316] property from the land books?

A. I think so, but I don't know of anybody that has access to their credit ratings.

Q. I am merely asking about the landownings. Now, in answer to certain interrogatories on several cases now pending in the Federal Courts in Virginia, as to any financial assistance from a legal fund, specifically, what cases were you referring to?

A. I would imagine that all of them, or whenever they would need financial assistance if they got into protracted

litigation. Specifically, the Prince Edward case is on appeal and is going to cost some money.

Q. In answer to Defendant's Interrogatory No. 34—I will be glad to present them to you to read, but I think you will remember—it was stated that the income of the Legal Defense Fund raised from contributors residing in Virginia totaled \$6,609.70 for the years 1954, 1955, and 1956. I thought, however, that you had testified that in 1955 alone the amount received was approximately \$6,000. Is that what you stated?

A. Yes, Mr. Mays. The reason I explained was, that the auditor has more different areas than I know of, and he had the refund on the Prince Edward case on another side of the ledger.

Q. Do you know what the amount of that refund was?
[fol. 317] A. No, sir, I do not. I think if I added it up I would.

Q. I am not looking for pennies, but I am trying to reconcile the response in the interrogatory with that testimony.

A. All I have here is \$6,256.19, with the asterisk, saying, "Includes refund from the District Court in Prince Edward case." I can get it for you.

Q. Will you try to obtain that? We may wish to put it in the record. *\$2,975.19*

A. Yes, sir.

Q. The interrogatory to which I referred was signed by you, wasn't it?

A. Yes, sir.

Q. And the response contained facts within your own knowledge?

A. I think I said it was not within my knowledge. It was referred to me because those figures are given me by my accountant. I hope I said that. I believe it to be true. These figures all come from our accountant. I don't even look at the books.

Q. You rely on the accountant, as we all do?

A. I have to.

Q. In answer to the Defendant's Interrogatory No. 58, it was stated that the Legal Defense Fund collected

Figures in italics pencilled notation.

[fol. 318] \$1,859.20 from activities in Virginia during the year 1956. I believe that was in line with your testimony also, was it not?

A. Yes, sir.

Q. Do you know what the Legal Defense Fund's gross income from all sources was that year?

A. What year is that?

Q. 1956.

A. Yes, sir, I do. The gross income for 1956 from all over the country, the calendar year, was \$351,283.32.

Q. Now, it has been stated in answer to Interrogatories Nos. 71, 74, 77, 80, 83, 86, 92, 95, and 99 that there is no relationship between the Legal Defense Fund and the attorneys representing the plaintiffs in the various segregation suits now pending in the Federal District Court in Virginia, except that Spottswood Robinson is compensated; is that correct?

A. That is correct. If you put it on compensation, I say it is correct, so far as I know; if you put it on any official connection, I could say positively they have none.

Q. That compensation to him comes through the Virginia Conference; is that correct?

A. To Robinson?

Q. Yes.

A. No. We pay him an annual retainer out of the Legal [fol. 319] Defense Fund.

Q. That I knew, but does he also receive additional funds for representation of plaintiffs in the school segregation cases?

A. Not that I know of. I doubt it.

Q. It has not come to your knowledge?

A. No.

Q. And you would not expect that?

A. Well, I don't know. These other lawyers, all we know is that they have requested Mr. Robinson and Mr. Robinson, with my consent, has agreed to help them in the case. That is the only connection we have. Sometimes I come down, too. I was, for example, in Norfolk. I just counselled with them and gave them whatever help I could. I did not participate in the trial.

Q. I take it from your previous testimony that the

Legal Defense does not instigate or maintain or give legal advice in lawsuits in which it is not a party or in which it has no financial interest?

A. Unless requested to do so.

Q. And what happens then?

A. If requested to give legal assistance in a case which involves violation of the United States Constitution, we will give that assistance, whether we have any pecuniary interest or we are a party in interest. We will do it, we [fol. 320] have been doing it.

Q. You testified, I think, that there are some lawyers in the state (I think white lawyers) to whom you refer matters from time to time for advice. Did you not so testify?

A. No, sir. I said there was one lawyer in Roanoke, who is now dead, that requested assistance from several organizations in a poll tax case and I agreed to help and all of the organizations got together. That is the only instance.

Q. I probably do not make myself clear to you. Do you not, or have you not from time to time employed white lawyers to give advice to you—employed them as counsel in order to supply opinions or information to the Fund?

A. We have not employed them as counsel; we have employed them for a specific legal research job, to go and check records, et cetera. Yes, we do, as well as Negro lawyers, for that purpose.

Q. And they have come to you and said they could not represent you any further if their names became public?

A. Yes, sir.

Q. All of them?

A. No, sir. Some of them are proud to.

Q. And others are afraid to, or ashamed to, or what?

A. One lawyer that I had to handle cases for us regu- [fol. 321] larly all the way up to the Supreme Court was also counsel to the late Senator Bilbo.

Q. Well, that is a means of identification.

A. Well, it is obvious he can't afford to be identified with us.

Q. Yes. When you split off the Fund from the Association (and I mean the NAACP), wasn't the real purpose

of that to enable people to have tax deductions which they could not get from the NAACP?

A. That was one of the reasons, but it was not the primary reason. The primary reason was the need to get the legal work apart from the general run-of-the-mill propaganda actions on legislation.

Mr. Mays: I have no further questions.

Mr. Robinson: I have no further questions.

MARTIN A. MARTIN, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

Direct Examination.

By Mr. Carter:

Q. Mr. Martin, would you relate for the record your address and your profession?

A. My residence address is 1222 Overbrook Road; my [fol. 322] office address is 118 East Leigh Street; my profession is attorney at law.

Q. Have you any connections with the National Association?

A. For the Advancement of Colored People?

Q. Yes.

A. I am the vice-chairman of the Legal Staff of the Virginia Conference of Branches of the NAACP and a member of that Legal Staff.

Q. Is that a voluntary job, or a job in which you get compensation?

A. It is a voluntary job. Sometimes, in some cases which we handle for private clients, we send our bill to the NAACP, but as far as I am concerned it is a voluntary association.

Q. How long have you been associated in that capacity?

A. Since the Legal Staff was first organized; I believe it was somewhere around 1943 or 1944.

Q. You indicate that you do get some compensation from the Conference for handling some cases?

A. Yes.

Q. Would you estimate that that is a substantial or a non-substantial portion of your total income?

A. Very nominal proportion of my income.

[fol. 323] Q. With respect to the amount of time and energy devoted to that kind of work, would you say that that is a substantial or a non-substantial portion of your time?

A. The time devoted to the work in that type of cases is much more than the compensation—the relative compensation involved.

Q. Now, Mr. Martin, you are aware of these statutes that are under attack in this lawsuit?

A. Yes.

Q. Referring you particularly to Chapter 31, Chapter 33, and Chapter 35, what, if any, effect would that legislation have on your activities with the Association?

A. Well, the activities which I have been involved in with the NAACP have been primarily voluntary and they have been cases which involved a great number of colored people, cases that I, as a colored person, was personally interested in and in which I was trying to help my people. The monetary remuneration was of very little concern; as a matter of fact, the monetary remuneration is very small in any circumstances; but they were cases in which I was trying to help my fellow-man. In most instances they were cases where the persons either went to officials of the NAACP themselves in the first instance and were referred to the chairman of the Legal Staff or to me as vice-chairman, or sometimes they came to us directly, asking us for [fol. 324] help in cases which involved a great number of people, such as transportation cases, such as school cases, and the like, in which they just didn't have the money to protect their rights, and they would ask us for help. In those cases I would get into them in certain instances and try to give them help. In most cases they did not have money enough to more than just pay the court costs, and they would have meetings in church and take up collections to help these people bear the expenses of litigation, and in most of the instances in which I was involved I would tell them not to pay me, because I didn't want to keep all those records and, as far as I was concerned, the NAACP was

mainly a coordinating agency that would collect the money and would send the money to the NAACP and when and if they ever collected the money, they would pay those bills. Sometimes it was years after the case was over before those bills were finally paid.

Now, I thought I was doing a good job in trying to help my fellow-man, but all of these laws came up and a serious doubt arose in my mind whether under those laws I would be guilty of a crime in trying to help my people. I just don't know.

Mr. Carter: That is all.

[fol. 325] Cross examination.

By Mr. Mays:

Q. In the testimony just given you were not confining yourself to school cases, were you?

A. Certainly not, no.

Q. Are you familiar with the manner in which the relationship between plaintiff and attorney arose in the several school cases in Virginia, or in any of them?

A. In some of them in which I was involved, I was.

Q. Which ones do you have in mind now?

A. The original case starting in Virginia, the case against the School Board of King George County, the case against the School Board of Gloucester County, the case against the School Board of Newport News City. I was directly involved in all of those.

Q. How were the plaintiffs brought to you in those cases?

A. The first school case we had in Virginia was a case against the County School Board of King George County. Reverend Smith (I forget his initials) came to me with a group of other persons up there and their children were getting, according to him an extremely inferior education, they wanted something done about it; they did not have the money; they were up there in a small county, one of the smallest counties in Virginia; and they asked for help; [fol. 326] they did not have the money to defray the expenses. I advised them that we would have to have some kind of reimbursement to help defray the expenses and I

thought they could get the NAACP to help. Meetings were held in various churches in King George County. I personally went up there and attended some of those meetings—went to the various schools and got photographers and took pictures, and the photographers, of course, had to be paid. We finally filed a suit against the School Board. Those people came to me personally. They asked me for NAACP help to try to vindicate their rights, and that was given.

Q. And the fees and the expenses were paid entirely by the fund.

A. By the fund which was collected by the NAACP.

Q. Did all of these plaintiffs come to you and ask for representation?

A. I think that they did. At that time Oliver W. Hill was one of my partners and Spottswood W. Robinson was one, and then we three worked on that case.

Q. How about the Newport News case?

A. I think they went to Oliver W. Hill in the first instance. We cooperated on their case also.

Q. Now, are you on this Committee of Thirteen Lawyers representing the local Virginia Conference?

A. That is right.

[fol. 327] Q. When people come to you to get you to assist them and you find it requires the help of the Fund, what do you then do?

A. I advise them in the first instance generally as to the time and expense and amount of money it is going to cost, and if they are able to handle the case privately, I advise them that is the best thing to do. If they say they just don't have the money but still want to vindicate their rights—and they usually in most instances assume that we can get the NAACP to help them in the programming of the activity.

Q. Now, as a member of this Committee of Thirteen Lawyers, you are one of those who has to pass in every instance on the help that is given in Virginia, do you not?

A. Yes.

Q. What part do you take in the selection of the lawyer for a particular case?

A. Generally the cases are referred to Mr. Oliver W. Hill as chief counsel. In his absence they are referred

to me. If it is a case arising in a certain locality and there is an attorney in that locality in whom I have confidence, I will refer the case to that attorney.

Q. Isn't that attorney in whom you have confidence in a particular area always a member of that Committee of Thirteen?

[fol. 328] A. Generally speaking, that is true.

Q. Well, do you know of any exceptions?

A. I think there were one or two exceptions within the past ten years, in which cases were referred or were handled partly or primarily by other attorneys. I don't have the names at my fingertips, but I think there were.

Q. Weren't they cases incidentally in which he was already in the case at the time it came to your attention?

A. Probably so.

Q. But do you know of any instance where you employed counsel not members of your Committee of Thirteen who were already in the case?

A. Well, generally not because the attorneys with whom I associated, the Committee of Thirteen, as you call them, are attorneys that I see practically every day or regularly. I try cases with them, I have confidence in them. I certainly would refer a client of mine to an attorney whom I didn't know.

Q. Well, you do know right many attorneys who are not a member of the thirteen?

A. Yes.

Q. And who are quite capable?

A. That's right.

Mr. Mays: Thank you.

[fol. 329] Redirect examination.

By Mr. Carter:

Q. Is it or is it not a fact, Mr. Martin, that those 13 attorneys that you referred to are attorneys that you know who have expertness in the field of race discrimination so far as the law is concerned?

A. That is true, they are attorneys that I have been associated with over a period of years and in these types of cases.

Mr. Mays: We do not mind, Your Honor, a certain amount of leading, but I mention it because I don't know how far it is going.

Mr. Carter: We have finished.

Mr. Ealey.

ROLAND D. EALEY, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Would you give your address and your profession?

A. 1508 North 25th Street, Richmond, Virginia. I am a lawyer.

Q. What, if any, connection do you have with the National Association for the Advancement of Colored People?

A. I am a member of the Legal Staff of the Virginia [fol. 330] State Conference of Branches and a member of the Legal Staff of the Richmond Branch of that Association.

Q. Have you handled any cases in litigation in court, the funds of which were paid by either the Richmond Branch or the Virginia State Conference of Branches?

A. Yes, sir, I have handled them that have been paid for by both the Virginia State Conference of Branches and of the Richmond Branch.

Q. Would you estimate that whatever fees you have received from this kind of work and from the Association, either the Branch or the Virginia State Conference, that that amount of income that you have received is substantial or insubstantial portion of your total income from your practice of law?

A. Very insubstantial.

Q. Directing your attention to the amount of time and energy necessary for this kind of litigation, is that a considerable or insubstantial amount of time in connection with the rest of your practice?

A. Well, the time that I have put into most of it has been far out of proportion to the compensation that I have received from it.

Q. To your knowledge in the handling of a case which the Richmond Branch or the Virginia Conference has paid the fees and expenses for, have you ever handled any case [fol. 331] to your knowledge in which the plaintiffs in this case whom you represented did not want to use you as counsel and did not desire your services?

A. No, all of the people that I have represented have been those that they themselves have desired me to represent them, or at least no objection was raised to me representing them.

Q. Directing your attention to the statute in issue in this litigation, and I am directing your attention particularly to those which raised the question of barratry and so forth with respect to lawyers handling the litigation in which the funds and fees are paid by someone other than the party in interest, how is that affecting your participation in the work of the Association in your activity as a member of the Legal Staff of the Virginia State Conference or the Legal Redress Committee of the Richmond Branch?

A. Very candidly, I have been somewhat hesitant to do much after the enactment of those statutes that you referred to for fear of jeopardizing my career, a possibility of being disbarred or losing my entire professional career.

Cross examination.

By Mr. Gravatt:

Q. Mr. Ealey, as a member of the Legal Committee of the State Conference of Branches, do you go around and [fol. 332] make speeches at branches of the National Association all over the state?

A. Well, I have made speeches at branch meetings, not as an attorney, but as a member of the Association.

Q. In those speeches, is it customary for you and other members of the Legal Staff to call attention to laws or administrative procedures which you consider to be unconstitutional and to encourage people to institute lawsuits to attack those statutes and administrative procedures?

A. Well, I have never made a speech and encouraged anyone to file a lawsuit attacking any statute. Usually

when I speak, it is generally in the area of social science, political science, public relations, race relations. But I have never, and I don't know of any other lawyer who is a member of the State of Virginia State Conference who has encouraged anyone to file a suit attacking any law. Not to my knowledge.

Q. Mr. Wilkins has testified in this case, substantially, that it is a part of the function of the branches and of the State Conference of Branches that if they believe a law is unconstitutional, and if they believe it should be challenged, that they urge people to do so, and if anyone steps forward, we agree to assist him, if other things are all right. Do you disagree with that as a program for the operation of the State Conference of Branches and for [fol. 333] the branches of the NAACP throughout Virginia?

A. Well, Mr. Wilkins is the chief administrative officer of the Association and Mr. Banks is the chief administrative officer of the State Conference, so they are better versed on the program than I am.

Q. Do most of the cases that have come to your Legal Staff come to you as the result of the activities of the NAACP chapters along these lines?

A. No, sir.

Q. They do not?

A. They do not.

Q. Is the litigation that you have been involved in criminal litigation or is it litigation in respect to school segregation or bus segregation, or what type of segregation have you been involved in?

A. The most that I have been involved in have been criminal in the area of bus transportation. That is about all.

Q. Were these cases referred to you by the chairman of the State Conference of Branches or did they come to you directly?

A. Most of them reached my office by referral from the Executive Secretary's office or the chairman of the State Legal Staff.

[fol. 334] Q. That is the Executive Secretary of the NAACP?

A. That is right.

Q. Or of Mr. Hill, the chairman of your Legal Staff?

A. That is correct.

Q. And they were referred to you from those sources?

A. That is correct, most of them.

Q. So that you do not then know how the cases arose and what stimulated the cases because they came to you through reference from these bodies?

A. In most instances. Now the last major one that I engaged in was a criminal case, the Lloyd Dobie case, and that case reached me by referral from a lawyer in New York. The boy's brother lived in New York, conferred with counsel there, and that counsel called me at my office and asked me if I would look into the matter and see if we could get monetary assistance for the boy. He was then facing electrocution. The time for appeal had virtually run out. I told them that I would be glad to see what could be done. After looking into the matter, I saw that it was not the type of case that the NAACP normally would give financial assistance in. However, I did discuss it with another member of the Legal Staff, Mr. Robinson, and he was of the same opinion. That the man needed some help, as we saw it. His [fol. 335] time had virtually run out and he was set to be electrocuted within a matter of two or three weeks. So I did go to see him.

His brother came down to see him and we went over to to (sic) the Virginia State Penitentiary. He was then in the death cell. We conferred with him. He wanted me to represent him. I advised him then that it might not be possible to get any aid for him as far as the NAACP was concerned, but I would do all I could. So we contacted the Judge for a stay. He refused at first. We contacted the Governor for a stay. He refused it. We went back to the Judge, so he granted us a stay. After the stay was granted, then we filed a motion under the statute in the nature of a writ of error, coram nobis—

Q. I don't care about going through the whole court.

A. I wanted you to see that all of these matters were not referred by Mr. Banks or Mr. Hill. However, the NAACP did help pay the printing of the record after the appeal had been granted, writ of appeal had been granted by the Supreme Court of Appeals.

Q. That is one instance when a case came to you from an outside source?

A. That is correct.

Q. That is not ordinarily true?

A. That is true.

[fol. 336] Mr. Carter: Mr. Tucker.

S. W. TUCKER, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Carter:

Q. Would you mind giving your address and your profession?

A. My name is S. W. Tucker; my address is Emporia, Virginia; and I am an attorney at law.

Q. Have you any connection at all, Mr. Tucker, with the Virginia State Conference of the National Association for the Advancement of Colored People?

A. I am one of the Legal Staff of the Virginia State Conference of the National Association for the Advancement of Colored People.

Q. Have you handled any litigation in which the funds were paid by the Virginia State Conference of Branches or any other branches of the NAACP?

A. I have handled litigation for which funds were paid by the Conference and I have handled cases for which funds were paid by the individual branches.

Q. Would you estimate that the funds and fees that you have received from such litigation is a substantial or non-[fol. 337] substantial portion of your total income from the practice of law?

A. It would be a very nonsubstantial portion.

Q. How would you estimate the time and energy and effort devoted to these cases in terms of your practice?

A. We don't get anything that is at all remunerative for the amount of time and the energy that we do devote to the cases. The budget just won't afford it.

Q. At the present time, in view of the passage of the statutes that are now at issue here, Mr. Tucker, do you feel that you can continue to function as a member of a legal staff of the Virginia State Conference or handle cases that are referred to you by a branch of the NAACP?

A. Without any NAACP financial support, you mean?

Q. I mean, in view of these statutes.

A. I just wanted to know whether you are asking me the question whether I could handle the cases without the NAACP financial support.

Q. I mean, if the NAACP is to pay the fees and expenses in the cases, do you feel that in view of these statutes which bar such payment—

A. I think I understand the line of your question now. In other words, the question would be whether I would consider that my license to practice law and my professional standing would be in jeopardy by reason of the statutes? [fol. 338] Q. Yes, sir.

A. My interpretation of the statute would be that I would be in violation of the statutes so that my license to practice law certainly would be in jeopardy.

Cross examination.

By Mr. Gravatt:

Q. Mr. Tucker, what branch of the NAACP are you affiliated with?

A. Which local branch?

Q. Yes.

A. The Greensville County Branch.

Q. Are you on any committee of that Branch?

A. I think not. I know that sounds evasive, but there was a time when I was a member of the Executive Committee, but I think currently I am not even listed that way.

Q. Do you have a Redress, Legal Redress Committee?

A. The Greensville County Branch does not, no.

Q. It has been testified here by the National Secretary of the NAACP, Mr. Roy Wilkins, and this is in respect to the activity of the local chapters, that "If we believe that a law is unconstitutional and believe that it should

be challenged, then we urge others to do so; and if any-one steps forward, we agree to assist him, if other things [fol. 339] are all right."

Had that been your experience in your operation of the branch chapters of the NAACP, that they generally proceeded in that fashion?

A. I think I would have to answer that with reference to my own experience.

Q. That is what I am asking you.

A. The cases that I have handled for branches usually involve acts of violence. In the majority of instances, acts of violence against a Negro person committed by a white person in which I have been requested either to assist in the prosecution on the criminal side or else to file against the person for the assault. They have not generally involved the constitutionality of statutes. So I wouldn't have any personal experience on which I could comment on that one way or the other.

Q. Those cases that you have referred to, do they come to you from the local branch of the NAACP or do they come through the Legal Staff of the State Conference of Branches?

A. Both ways. By and large, they have come from several of the local branches in Southside, Virginia, but there have been some referred to me through the Conference.

Q. Whenever one of the local branches in Southside, Virginia, gets a matter of that kind that they think needs [fol. 340] legal redress, they refer the individual to you for legal assistance?

A. That has happened, yes.

Q. When you are paid by the local branches, are you paid on a per diem basis or do you simply submit a fee as an attorney, ordinarily—submit a fee as an attorney ordinarily does in a case?

A. I submit a bill. I govern myself by the per diem that the State Conference has adopted. I certainly have never exceeded that and, in many instances, I have accepted compensation far less than that.

Q. What is the amount of the per diem that has been approved by the State Conference?

A. It is \$50 or \$60. I have to always refer to my records to find out which figure it is, I am not sure. I think it is \$60. It is \$50 or \$60.

Q. In addition to that, do you charge for mileage and expenses?

A. Mileage and expenses, yes.

Q. Have you ever turned down any cases that were referred to you by the branch of the NAACP or by the State Conference of Branches?

A. I have had no occasion to turn down any that have been referred by the State Conference. I have had occasions where some trouble occurred in the community and [fol. 341] some of the branches people have asked me to come in and investigate. I have found cases—instances where their fears were not warranted. I so advised them. That was the end of the matter. I found others where there was cause for concern and some of those instances something was done about it.

Q. Do you think that your legal relations with the branches of the NAACP and the State Conference of Branches, as a member of the Legal Staff, insofar as your employment as an attorney is concerned is a characteristic of the relations of most of the attorneys who are members of the Staff of the State Conference of Branches?

A. I should think so.

Mr. Gravatt: That is all.

PLAINTIFFS REST

Mr. Robinson: If the Court please, that seems to be the case for both plaintiffs.

Mr. Mays: May we have a short recess, if Your Honor please?

Judge Soper: Yes, sir. Recess for five minutes.

(A short recess was taken, and the hearing continued.)

Mr. Gravatt: If the Court please, the defendant would like to call Mr. Spotswood Robinson as an adverse witness without in any way disqualifying him as counsel in [fol. 342] the case.

Judge Soper: Mr. Robinson.

Gen. Truckham
1407 1/2 1st St. N. - Bank Bldg
Richmond, Va.

VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 127

ALBERTIS S. HARRISON, JR., ATTORNEY GENERAL
OF VIRGINIA, ET AL., APPELLANTS,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCE-
MENT OF COLORED PEOPLE, A CORPORATION,
AND NAACP LEGAL DEFENSE AND EDUCA-
TIONAL FUND, INCORPORATED.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

FILED JUNE 25, 1958
PROBABLE JURISDICTION NOTED OCTOBER 13, 1958

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 127

ALBERTIS S. HARRISON, JR., ATTORNEY GENERAL
OF VIRGINIA, ET AL., APPELLANTS,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCE-
MENT OF COLORED PEOPLE, A CORPORATION,
AND NAACP LEGAL DEFENSE AND EDUCA-
TIONAL FUND, INCORPORATED.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

INDEX

	Original	Print
Record from the U.S.D.C. for the Eastern District of Virginia, Richmond Division, in Nos. 2435 and 2436		
Complaint of NAACP	2	1
Motion of NAACP to dismiss	20	16
Answer of NAACP	29	20
Complaint of NAACP, Legal Defense and Educa- tional Fund, Inc.	34	24
Motion of NAACP, Legal Defense and Educa- tional Fund, Inc. to dismiss	51	38
Answer of NAACP, Legal Defense and Educa- tional Fund, Inc.	54	40

Record from the U.S.D.C. for the Eastern District
of Virginia, Richmond Division, in Nos. 2435
and 2436—Continued

	Original	Print
Opinion, Soper, J.	59	43
Concurring in part and dissenting opinion, Hutcheson, J.	112	94
Judgment	139	122
Notice of appeal	183	124
Cross-designation	187	127
Clerk's certificate (omitted in printing)	190	128
Transcript of trial proceedings, September 16, 17, 18 and 19, 1957	1	129
Appearances	2	129
Colloquy between court and counsel	2	129
Testimony of W. Lester Banks— direct	8	133
Colloquy between court and counsel	15	137
Testimony of W. Lester Banks— direct	21	140
cross	22	141
Motion to strike testimony and overruling thereof	23	142
Testimony of W. Lester Banks— cross	23	142
Roy Wilkins— direct	61	164
Offers in evidence	63	166
Testimony of Roy Wilkins— cross	79	175
Oliver W. Hill— direct	130	206
cross	137	211
Jack C. Orndorff— direct	170	230
Robert D. Robertson— direct	176	234
Mrs. Sarah Brooks— direct	184	239
cross	190	242
Mrs. Mildred D. Brown— direct	193	244
cross	201	249

Record from the U.S.D.C. for the Eastern District
of Virginia, Richmond Division, in Nos. 2435
and 2436—Continued

Transcript of trial proceedings, September 16, 17,
18 and 19, 1957—Continued

	Original	Print
Testimony of Mrs. Edith Burton— direct	204	250
Mrs. Margaret I. Finner— direct	207	252
cross	213	255
Mrs. Barbara S. Marx— direct	218	258
cross	224	262
Colloquy between court and counsel	226	263
Testimony of Sarah Patton Boyle— direct	227	264
cross	232	267
Offers in evidence	235	268
Testimony of Thurgood Marshall— direct	248	275
Offers in evidence	249	276
Testimony of Thurgood Marshall— cross	290	301
Martin A. Martin— direct	321	320
cross	325	322
redirect	329	324
Roland D. Bailey— direct	329	325
cross	331	326
S. W. Tucker— direct	336	329
cross	338	330
Plaintiffs rest	341	332
Testimony of Spotswood W. Robinson, III— direct	342	333
cross	358	342
Colloquy between court and counsel	360	344
Testimony of Leonard R. Bland— direct	364	346
cross	369	348

Record from the U.S.D.C. for the Eastern District
of Virginia, Richmond Division, in Nos. 2435
and 2436—Continued

Transcript of trial proceedings, September 16, 17,
18 and 19, 1957—Continued

	Original	Print
Testimony of Alma R. Randle—		
direct	375	352
cross	378	354
Maude E. Walker—		
direct	387	359
cross	389	360
Sarah Elizabeth Hicks—		
direct	395	364
cross	396	365
redirect	402	368
Rosa Bell Davis—		
direct	403	369
cross	406	370
Robert Drakeford—		
direct	410	373
cross	413	375
Moses C. Maupin—		
direct	416	376
C. W. Woodson, Jr.—		
direct	419	378
cross	422	380
redirect	426	383
Herbert B. Adams—		
direct	428	384
cross	432	387
redirect	446	395
recross	447	395
C. T. Coates—		
direct	447	396
cross	453	400
Harold Clark Taylor—		
direct	465	406
cross	469	409
J. F. Culpepper—		
direct	472	411
cross	475	413
Dr. Francis V. Simpkins—		
direct	477	414

Record from the U.S.D.C. for the Eastern District
of Virginia, Richmond Division, in Nos. 2435
and 2436—Continued

Transcript of trial proceedings, September 16, 17,
18 and 19, 1957—Continued

	Original	Print
Statement by Judge Soper	483	417
Testimony of Dr. Francis V. Simpkins—		
(resumed)—		
direct	485	418
R. Bland—		
(recalled)—		
cross	487	419
Offer in evidence	488	420
Testimony of R. Randle—		
(recalled)—		
cross	489	421
Offer in evidence	490	422
Testimony of Mrs. Sarah Elizabeth Hicks—		
(recalled)—		
cross	492	423
Offer in evidence	492	423
Testimony of Rosa Bell Davis—		
(recalled)—		
cross	493	424
Offer in evidence	494	424
Testimony of Maude E. Walker—		
(recalled)—		
cross	494	424
Offer in evidence	497	426
Testimony of Maude E. Walker—		
redirect	498	426
C. Harrison Mann, Jr.—		
direct	500	427
cross	510	434
B. B. Rowe—		
direct	541	452
cross	548	456
Plaintiff's statement in re purpose for which newspaper articles (Plaintiff's Exhibit 5) are offered	550	457

Record from the U.S.D.C. for the Eastern District of Virginia, Richmond Division, in Nos. 2435 and 2436—Continued

Transcript of trial proceedings, September 16, 17, 18 and 19, 1957—Continued

Testimony of Julian A. Sherman—

direct 557 464

John Patterson—

direct 561 466

cross 571 472

Otis Scott—

direct 575 475

Mrs. Viola Neal—

direct 580 477

cross 583 479

redirect 585 480

George P. Morton—

direct 589 483

cross 596 487

George R. Fridell, Jr.—

direct 600 490

Plaintiffs rest 604 492

Colloquy between court and counsel 605 493

Reporter's certificate (omitted in printing) 612 496

Plaintiff's Exhibits:

No. 1—Certificate of Incorporation of the National Association for the Advancement of Colored People, dated May 25, 1911 with certificate of Secretary of State of New York and attachments 613 496

No. 2—Constitution of the NAACP 620 503

No. 3—Constitution and By-Laws for Branches of the NAACP 621 505

No. 6—General Assembly of Virginia's Act to provide for submitting to the qualified electors the question of whether there shall be a convention to revise and amend Section 141 of the Constitution of Virginia, approved December 3, 1955 622 506

No. 7—General Assembly of Virginia's Act approved January 19, 1956 625 511

Record from the U.S.D.C. for the Eastern District of Virginia, Richmond Division, in Nos. 2435 and 2436—Continued

Plaintiff's Exhibits:—Continued

No. 8—Senate Joint Resolution No. 3, Commonwealth of Virginia General Assembly, adopted February 1, 1956 628 516

No. 9—An ordinance to ordain and proclaim as a revision and amendment of Section 141 of the Constitution of Virginia 632 520

No. 10—Commonwealth of Virginia, General Assembly, House Joint Resolution No. 97 634 522

No. 11—Acts of Assembly Relating to Education, General Assembly of the Commonwealth of Virginia, Extra Session 1956 635 523

No. 12—Address of Thos. B. Stanley, Governor To the General Assembly, Monday August 27, 1956 690 625

No. 13—Article entitled, "Students, Backed by Petition, To End Strike at Farmville" 698 634

Defendant's Exhibit:

No. 3—Letter from U. S. Tate to Thurgood Marshall, dated December 6, 1955 699 636

Letter from Robert L. Carter to Clerk, U.S.D.C., dated September 26, 1957 pursuant to agreement of counsel with enclosures 702 640

Letter from Oliver W. Hill to Walkley Johnson, Clerk, dated October 7, 1957 pursuant to stipulation of counsel with enclosure 709 645

Order noting probable jurisdiction 711 647

CLERK'S NOTE: R. R. Morton School should be R. R. *Moton* School. Casper should be *Kasper*.

EVIDENCE ADDUCED IN BEHALF OF THE DEFENDANTS

SPOTSWOOD W. ROBINSON, III, called as an adverse witness by the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. State your name, residence, and occupation.

A. My name is Spotswood W. Robinson, III; my residence is 2500 Brook Road, Richmond, Virginia; I have a law office at 623 North Third Street, Richmond, Virginia; I am an attorney at law and I am Southeast Regional Counsel for the NAACP Legal Defense and Educational Fund, Inc.

Q. You were formerly associated in partnership in the practice of law with whom?

A. With Oliver W. Hill and Martin A. Martin as partners. There was a fourth attorney in the office who was not a partner, James R. Olphin.

Q. You have severed that relationship?

A. That is correct.

Q. When did that take place?

A. About the 1st of September, 1955.

[fol. 343] Q. Did the dissolution of your partnership relations with Mr. Martin and Mr. Hill have anything to do with your affiliation with the Legal Defense Fund and their affiliation with the State Conference of Branches of the NAACP?

A. No, it did not.

Q. What are your duties as Regional Counsel for the Defense Fund?

A. To engage in research of a legal character when there is occasion therefor, to render service to parties who may personally request me to do so to render service for them, to render service to litigants upon the request of their attorneys, such latter services to be rendered along with the services that their own attorneys will render for them.

Q. What investigation, if any, are you required to make of the litigants or clients whom you represent on behalf of the Legal Defense Fund?

A. If it is a situation in which I know that a party is able to conduct his own litigation without the necessity of assistance from the Legal Defense Fund, under such circumstances I would not undertake to represent that party.

Q. Do your duties require you to make any investigation of those persons who apply to you for legal assistance [fol. 344] to ascertain whether or not they are financially able to pay for legal service?

A. If you mean by that, Mr. Gravatt, obtaining a credit report, looking extensively into the financial situation of the parties who may request that assistance, the answer is no; and, as a matter of fact, as a matter of practice, I have never done it.

Q. Do your duties as Regional Counsel require you to make any investigation of those whom you represent on behalf of the Defense Fund?

A. I consider that the obligation on me in that regard, Mr. Gravatt, simply requires me to exercise my judgment upon the appearances as they do appear to me and not to represent parties where it is plain that those parties are able to afford their own legal counsel.

Q. Do you or do you not make any investigation to ascertain whether or not the prospective client can finance his own litigation?

A. I do not make an investigation beyond the point of looking at the client, if the client comes into the office, exercising judgment as to appearances as they do appear, and considering those in the light of what I am requested to do. It so happens, Mr. Gravatt, that in recent times most of the requests for my services have come to me, not from individual litigants, but from attorneys who have [fol. 345] been engaged to represent those litigants; and under those circumstances I simply rely upon the attorneys who ask me to lend them assistance in the way of my own services in and about those cases. I am also somewhat familiar with the expense of litigation of that kind. They have been principally matters affecting the matters of segregated public schooling, and I know, as a matter of fact, that in the ordinary situation a party is not alone able to employ his own attorney, to pay his own court

costs, and to finance his case through the courts to the end that he might obtain his constitutional right to a non-segregated education.

Q. Have you ever refused to represent any person who has applied to you, either personally or through his attorney, on account of that person's being financially able to finance his own litigation?

A. Mr. Gravatt, I believe so, in this sense. There have been occasions when people have requested me to represent them in civil actions out of which they sued. There have been such situations in which I have declined to act. There probably was a double reason in that regard. One of the reasons was that I felt that under those circumstances they would be able, without my services, to obtain other counsel and consequently it would not be necessary for my time or for the money of Legal Defense to go into a case of that character. It seems to me I have had a few cases [fol. 346] during the time that I have been connected with Legal Defense and Educational Fund that have fallen in that category.

Q. Are those types of cases of a type which are within the policy of the Legal Defense Fund to handle, that is, suits to recover damages?

A. Let me give you an example of one that comes to mind. A person has been segregated on the basis of race on a public transportation facility. Prior to the time of the decision of the Supreme Court in the Morgan case and the decisions of the United States Court of Appeals for the Fourth Circuit and the Supreme Court of the United States on denial of certiorari in the Chance case, in all probability I would have rendered service in my capacity as a representative of Legal Defense to those persons. Once, however, the principle was established that a person had a right to travel in interstate commerce without being segregated on the basis of race or color, thereby establishing the principle that a carrier subjecting such a person to a racial discrimination of that kind might render itself liable in damages on that account, there have been situations where I have declined, upon the request of such persons, to render services for him. That is the kind of situations I have reference to.

Q. I understand the kind of situation. My question was [fol. 347] whether that type of case falls within the policy of the National Defense Fund for financing attorney's fees or for costs.

A. It is my understanding that once a principle has been established as a matter of law, in other words, the legal principle has been fixed, that under those circumstances if it is simply a denial of a right of a person remedial in damages that I have a right to refuse to accept a person of that sort.

Q. If the principle has not been established, then the Legal Defense Fund will pay your attorney's fees and will pay the costs of a suit by a private litigant to recover damages for violation of civil rights?

A. That is correct, at least, that has been done in the past.

Q. And what becomes of the damages that are recovered?

A. Paid to the litigant entirely in such instances where to my knowledge damages have been recovered.

Q. Have you handled such cases?

A. Well, I was of counsel in the case of *Chance v. The Atlantic Railroad Company*, along with Mr. Hill, perhaps also Mr. Martin, I believe. I believe the recovery of \$50 was effected in that case and so far as I know if it got paid it got paid to Mr. Chance. I think I can say, in answer [fol. 348] to the question, Mr. Gravatt, that there has never been a situation that I have been connected with where a party has effected a recovery and any part of that recovery was paid to Legal Defense and Educational Fund.

Q. You are aware, Mr. Robinson, of the provision of your charter, or the charter of the Legal Defense and Educational Fund as to the very first statement of the purposes of the corporation?

A. Well, there are several purposes that are enumerated in the certificate of incorporation. I am not certain about it.

Q. May I call your attention to this one?

A. Certainly, I wish you would.

Q. "The Corporation is to be formed for the following purposes:—"

(A document was handed the witness.)

Mr. Gravatt: Yes, by all means.

Q. (Continuing) "(a) To render legal aid gratuitously to such Negroes as may appear to be worthy thereof who are suffering legal injustice by reason of race and color and unable to employ and engage legal aid and assistance on account of poverty."

Have you been aware of that provision in the charter of the Defense Fund Corporation?

A. Yes, I have, but I have tried, as I have already [fol. 349] testified—I have tried to keep my activities within the scope of this provision.

Q. But you have stated that you did not feel it was incumbent upon you to do more than to make the casual observation that you would make of any kind coming into an attorney's office for the purpose of ascertaining whether or not you were complying with that provision of your charter.

Mr. Marshall: May it please the Court, we object to this argument with the witness, even though he is one of the lawyers. I think the same testimony has been gone over and over again and we are now at the point of argument. I think sometime it ought to stop.

Judge Soper: It may be, but I think a certain amount of cross-examination may be allowed.

[fol. 350]

By Mr. Gravatt:

Q. In the light of that provision of your charter and with it before you, do you still insist, Mr. Robinson, that you did not feel and have not made any investigation to determine whether or not persons whom you have represented could afford litigation on account of poverty?

A. Not beyond the extent to which I have already testified.

Q. And that simply was, you said, I believe, that you made the ordinary observation of them that you would make of any person coming into your office?

A. Considering the type of thing that I was asked to do. I would know, for example, that if I were being asked to engage in a suit that would seek to remove the practice of racial segregation from a public school system in Virginia, that it would take a person of very substantial means to conduct that litigation all by himself.

Q. The testimony has been here that such legislation might cost as much, I believe, as 150 or 200 thousand dollars. Now, the principle having been established in the May 17, 1954, decision of the Supreme Court of the United States, no such tremendous amount of money as that is involved in merely filing a petition asking the Court to enjoin a school board—

Judge Soper: That has been already conceded, I think. [fol. 351] Mr. Gravatt: Yes, sir. Well, I want to find out from him. The other man did not know; he was assuming.

Judge Soper: He gave you some figures before, some two or three thousand dollars, something like that, it was likely to cost.

Mr. Gravatt: He said he didn't know, and I want to find out from Mr. Robinson what his opinion is.

By Judge Soper:

Q. Well, do you know what those cases cost?

A. No, Your Honor, except in a general way. I would accept Mr. Marshall's estimate. But in all the school cases I have participated in since 1951 in Virginia, with the exception of the Prince Edward case, they have been cases that I have gotten into on the request of the attorneys who had already been engaged by those parties and, consequently, just what the expenses amounted to and what they were charging, and that type of thing, were considerations that had nothing to do with my activities in behalf of the Legal Defense, and I have no real familiarity with the cost of those cases.

By Mr. Gravatt:

Q. Well, whether an attorney employs you or whether [fol. 352] you are employed by a private litigant, you are still working in behalf of a non-profit charitable corporation?

A. No, sir.

Q. Sir?

A. No, sir. If I am requested by a private individual to represent that private individual, I consider that pri-

vate individual my client in whatever I do, and not the Legal Defense and Educational Fund that pays me a retainer, and if I am requested by an attorney for Client A to associate with that attorney in the representation of Client A, I consider that my obligation is to represent Client A and not Legal Defense and Educational Fund. I think it is fair to say that I am, first, the attorney for the litigants who are involved.

Q. But however it may be, your services are being paid for by Legal Defense Fund, Incorporated?

A. That is correct.

Q. And being paid for on the basis that the litigant that you are representing is not able to pay for his own services?

A. On the basis that I would not accept the responsibility of representing that client if it appeared to me that that client were able to pay for his own legal services.

Q. Now, you are presently associated in which of the [fol. 353] cases in Virginia?

A. I am presently in the case in Arlington County, the case in Charlottesville, the case in Newport News, the case in Norfolk, and the case involving Prince Edward County. I think they are all.

Q. Have you made any investigation of any of the litigants in any of those cases to ascertain whether or not they are able to pay their own financial expenses?

A. No, sir, not beyond what I have already said, and for the reason that I have already undertaken to give you, Mr. Gravatt: that the very nature of the case is such that it would certainly appear to me from a reasonable viewpoint that unless there is a person of considerable wealth, that person would not be able to handle these cases alone without financial assistance of some sort.

Q. If you examined the records in the City of Newport News and found that one of the clients whom you represent in that case owned real estate having a market value in excess of \$40,000, would you consider that that person was a proper person for you to represent under the charter provision of the Legal Defense Fund?

A. Well, I might say, Mr. Gravatt, that, of course, I did not make that kind of an investigation of any of the

litigants in Newport News. To further answer your question, I think that I would have to know more about the [fol. 354] particular individual in order to formulate a judgment of the kind that you asked me for. All the real estate that you mention might be completely mortgaged. I don't know.

Q. Well, if it were not mortgaged and no judgments against it?

A. Mr. Gravatt, I don't think I can say more than, as a matter of what has happened in the past, on the basis of what I have done, than I have already said. The only thing that I could do would be to express an opinion on the situation on the hypothetical questions that you are asking me, predicated on facts that I don't know anything about.

Q. Mr. Robinson—and I don't mean to argue when I say this—one of the allegations in this case is that this legislation will work a hardship on people who otherwise might not be able to protect their interests.

A. Yes.

Q. And I think it is important that we should know something about the people that you are representing at the present time from that point of view in connection with your case.

Judge Soper: Now, what is the question?

Mr. Gravatt: The question is: If he examined the land books in the City of Newport News and found a public [fol. 355] record that one of the litigants owned real estate of a market value in excess of \$40,000; another owned real estate the market value of which is in excess of \$14,000; another one owned real estate and two automobiles, one of which was an Oldsmobile and the other a Cadillac, and having real estate valued in excess of \$58,000; another owned real estate valued in excess of \$21,000 and owned a Chrysler and a Mercury automobile; another owned real estate valued in excess of \$35,000 and owned a Buick automobile and two trucks; and another owned real estate valued in excess of \$27,000 and five motor vehicles, three Chevrolets, a Pontiac, and a Chevrolet station wagon—if he had that information, would he consider that those persons

were persons whom he could represent and for whom the Defense Fund could pay legal expenses and finance litigation on the ground of poverty.

Judge Hoffman: In a class action?

Mr. Gravatt: Yes, sir.

A. Mr. Gravatt, so long as it appeared to me that there were persons who were involved in the litigation—let me put it this way: So far as it would appear that there were parties involved in the litigation who could not afford that litigation themselves, irrespective of the financial position of other parties to the suit, I believe that I would still undertake to represent the parties plaintiff in the litigation. Now, as I said before, you understand, the facts that you mention may be entirely correct. All I can say is that I do not know them to be correct. They were not at hand so far as my own knowledge was concerned at the time that I decided to enter the cases. Considering the cost of litigation of that kind and assuming, as I am forced to assume, that there were parties there who could not afford to pay for the case themselves, then I feel that I was justified in entering the case at the request of attorneys who were engaged to represent those parties.

Q. Have you ever at any time had a personal conference with the clients whom you represent in that case?

A. In the Newport News case?

Q. Yes.

A. No, I have not. I have had occasion to talk to several parties who are plaintiffs to the case, but talking to the entire body of plaintiffs, I did not. My communications in that case have been in all substantial respects with Mr. W. Hale Thompson and Mr. Philip S. Walker, who were engaged by the people to represent them.

Q. Do you, in the course of these lawsuits, some of which, certainly the Prince Edward case, has now endured for [fol. 357] going on six years, I believe—

A. Since 1951.

Q. Isn't that right?

A. That is correct.

Q. Do you make either verbal or written periodic reports to the clients and litigants whom you represent?

A. Yes. I do not think that there have been any written reports, none that I recall, made to the clients in the Prince Edward case, but from time to time while the case has been pending we have gone back to Prince Edward County, we have notified our clients of our coming—when I say “we” I am referring to Mr. Hill and myself—we have had occasion to sit down and talk to these people, advise them of the status of the case, and from time to time tried to ascertain their desires with respect to the case, discussed with them the plans that we had for future activities in connection with the case. That has occurred from time to time while the cases have been pending. There was a long interval of time, Mr. Gravatt, during which it was not necessary to do it, because from 1952 until 1954 the cases were in the Supreme Court. But there have been several occasions upon which Mr. Hill and I have made an effort to keep our clients up to date, notwithstanding the fact that there has been full publicity about it, and to discuss the problem of our clients. We [fol. 358] would notify them, we would suggest a meeting, we would go and talk to those who were there and, of course, we would formulate our plans accordingly.

Mr. Gravatt: You may inquire.

Mr. Marshall: May it please the Court, I think I have no choice except to proceed at this stage as one of the attorneys for the defense, since Mr. Robinson and I are the only two lawyers here, so I will have to ask the questions.

Judge Soper: Very well. Go ahead.

Cross-examination.

By Mr. Marshall:

Q. Mr. Robinson, are all of these segregation cases in Virginia class action cases?

A. So far as I can recall, they all are.

Q. And so far back as you can remember?

A. I believe that is correct.

Q. When you estimate before a case is coming up, or consider it, in estimating the possible cost of litigation

and what you are up against, do you look to all of the resources of the party you are about to sue?

A. No.

Q. Do you take that into account in estimating the cost [fol. 359] of the case?

A. Of course, in all instances, Mr. Marshall, the defendant, without exception so far as I can recall, of the suit that was just filed here in Richmond—the defendants have been the city or county school boards and the division superintendents, and, of course, I knew as a matter of fact that those bodies as public bodies had financial resources of their own that could be used in defending other parties.

Q. For example, in the Prince Edward case there is another party involved?

A. The Commonwealth of Virginia, in the Prince Edward school case—and while I have not acted on the information contained in the public press, the Commonwealth of Virginia, through the office of the Attorney General, said it would be able to lend assistance to the communities finding themselves confronted with litigation to the end of racial segregation in schools.

Q. Is that also true of the Arlington, Charlottesville, and Newport News cases?

A. That is correct.

By Judge Hoffman:

Q. If the principle of desegregation in the public school system should be accepted as such, what would you view your individual responsibilities in connection with the De-[fol. 360] fense Fund to be where a parent of a child is financially able to employ his or her own counsel?

A. I think, Judge Hoffman, that I would take about the same position that I have indicated in answer to one of Mr. Gravatt's questions, that I have had occasion to take in the past with respect to the field of transportation: Once a principle becomes accepted and the issue as to whether a child should be admitted to this school or that school becomes an issue that can be litigated in an inexpensive fashion and the request is made to me for services and the request comes from a parent who appears

able to take care of that service, I believe that—well, my present opinion would be that I simply wouldn't undertake to represent the parent in that activity.

COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Mays: If Your Honor please, you will remember from the pretrial conference that the plaintiff was to take, we understood, three days for the presentation of the case, and we have summoned our witnesses beginning tomorrow morning. The plaintiff, however, has elected not to put on some of the evidence they had intended to and, therefore, we come close to the end of the day and we are not prepared to go forward, of course, with the witnesses we have summoned. We hope you will indulge us in that until to-[fol. 361] morrow.

And may I make this inquiry of the Court: You will recall at the outset yesterday that the exhibits that were attached to the bill were offered, I believe, in evidence. In connection with the pretrial conference, it was agreed that authentication would not be required, but we reserved the right to object on the ground of admissibility, and at the time they were brought to the Court's attention on yesterday, Your Honor, Judge Soper, stated that the question of admissibility in these things is reserved, to which I agreed. We had no argument as of that time, and I am merely inquiring now whether it will be proper for us to make that argument in our brief, or whether the Court wanted that argument independently?

Judge Soper: It seems to me that is one of the general questions. I defer to my colleagues, of course, but it would seem on the face of it to be one of the general questions that you would like to brief.

Mr. Mays: I would be happy to.

(There followed a discussion off the record.)

Judge Soper: In connection with what you stated a moment ago about the admission of those various exhibits, that happens to throw some light on the legislative history [fol. 362] of the thing.

Mr. Mays: Definitely.

Judge Soper: That is a matter, of course, that we would like to have argued and briefed.

That reminds me again of the question of admissibility of these newspaper articles, and I repeat the request that I made of counsel. I do not see why that could not be put into our hands tomorrow, not as a binding thing and not as an argument, but just as a statement as to what purposes those articles are offered for. It may be that tomorrow or on Thursday we shall have some time to talk about the various questions that we want briefed and make arrangements for the argument, and all that sort of thing, but I should like to have counsel consider this for the convenience of all of us in connection with the argument and the filing of the briefs:

Judge Hutcheson has a number of engagements, one of which will take him out of the state. I shall be down here in attendance on the Court of Appeals beginning the 7th of October, and I would like you to consider whether or not it would be possible to get the briefs in before that date, so that we may have the argument on some day later in the week beginning Monday, October 7. That will give you something over two weeks. In other words, I do not ask for an immediate response on either side, but think that [fol. 363] over.

We will adjourn until tomorrow morning. Would it be worthwhile, Gentlemen, to meet a bit earlier, so you will be sure to get through in time, or is that necessary?

Mr. Mays: I don't think it is necessary.

Judge Soper: We will meet at the usual time, ten o'clock tomorrow.

Adjourn the court until tomorrow morning at ten o'clock.

(Thereupon, an adjournment was taken until the following morning at ten o'clock.)

[fol. 364]

September 18, 1957

The court reconvened at 10:00 a. m.

Appearances: As previously noted.

Judge Soper: You may proceed, Gentlemen.

Mr. Gravatt: I would like to call Leonard R. Bland.

LEONARD R. BLAND, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. You are Leonard R. Bland?

A. Yes, sir.

Q. Where do you live, Leonard?

A. I live in Prince Edward County, State of Virginia—Prince Edward County.

Q. What is your occupation?

A. Railroad man.

Q. You are one of the plaintiffs in a suit that was instituted against the School Board of Prince Edward County. Will you state how you became a plaintiff in that suit?

[fol. 365] A. Well, how the beginning was, the children was on a school strike. I had children in the school at the time—

Judge Soper: I can't hear him.

Will you talk this way, please. Begin again.

A. (Continuing) At the time this thing happened, the children was out on a school strike. Well, the parents called a meeting at the school in order to see what could be done to get the children back in school.

By Mr. Gravatt:

Q. Was there anything said at that meeting in regard to the institution of a lawsuit?

A. Not at the school—the meeting we had at the school. The first meeting was at the R. R. Morton High School.

Q. Did you later attend another meeting?

A. I attended another meeting at the church, at the Baptist Church.

Q. Who called that meeting?

A. I don't know, sir, who called it.

Q. Who spoke at the meeting?

A. It was a lot of speaking at the meeting. It is hard to determine just what individual did speak. There was a lot of speaking being done.

[fol. 366] Q. Was Mr. Hill present at the meeting?

A. I am not for sure, but I think Mr. Oliver Hill was there. I think Mr. Oliver Hill was there.

Q. Was Mr. Spottswood Robinson present at the meeting?

A. If he was, I don't know. I didn't know him then. He could have been there and I didn't know who he was.

Q. Did you employ Mr. Oliver Hill or Mr. Spottswood Robinson to represent you in the institution of a suit for the integration of schools in Prince Edward County?

A. You mean, did I employ him personally?

Q. Yes.

A. No, sir, not me individually.

Q. When was the first time you knew you were a plaintiff in that suit?

A. I thought it was all settled, after the length of time, until the Boatwright Committee visited my home.

Q. Do you know when that was?

A. No, sir, I don't know just exactly what date it was. It has been a right good while ago.

Q. Was it within the last year?

A. Oh, yes; yes, sir.

Q. Was that the first time that you knew that you were a plaintiff or a party to the lawsuit against Prince Edward County?

[fol. 367] A. That was the first time I could remember anything about it, because, as I said a while ago, I thought it was through with until the Boatwright Committee visited me.

Q. Were you interested in participating in a suit to bring about the mixing of the races in the public schools of Prince Edward County?

A. I am unprepared at this time to answer that.

Q. What do you mean by that, Leonard? Be frank and explain yourself.

A. I don't exactly understand the statement you made. I don't exactly understand it.

Q. You don't understand the statement I made?

A. No, I don't understand it.

Q. Did you ever intend, or would you have been a party to a lawsuit to compel the mixing of the white and colored children in the public schools of Prince Edward County?

A. So long as the colored people got the same school, the same opportunities, the same facilities, and the same education—if they get that, I don't see what profit it would be to sit side by side in the school.

Q. Have you ever had any written or oral communication during the course of the litigation from either Mr. Hill or Mr. Robinson?

A. No, sir, not me individually; no, sir.

[fol. 368] Q. Have they ever discussed this matter with you at any time?

A. No, sir.

Q. Have you ever received any notice of any opportunity to discuss it with them?

A. From them gentlemen?

Q. Yes.

A. No, sir.

Q. Have you had any harassment, criticism, or economic reprisals visited upon you as a result of your participation in that lawsuit?

A. From who?

Q. From anybody?

A. No, sir.

Q. Have your relations with the white people in Prince Edward County been the same since that suit was instituted as they were prior to that time?

A. So far, it has been the same.

Mr. Gravatt: That is all. Keep your seat. They may want to examine you and ask some questions.

[fol. 369] Cross examination.

By Mr. Robinson:

Q. Mr. Bland, do you recall on what day of the week the student strike at the Morton High School began, whether it was Sunday, Monday, Tuesday, Wednesday, Thursday, Friday, or Saturday?

A. No, sir, I don't. I don't know what date it would be.

Judge Soper: I think he is talking to himself, as far as I am concerned.

A. (Continuing) I don't know what date it was. No, sir, I don't know what date it was—what day it was, to save my life. I just don't know.

By Mr. Robinson:

Q. Did you attend the meeting that was held in the basement of the First Baptist Church in Farmville on Wednesday of the first week that the students were out on strike?

A. No, sir.

Q. Were you present at that meeting?

A. No, sir.

Q. You have testified that you were present at two meetings?

A. That's right.

Q. When was the first of these meetings?

[fol. 370] A. I don't know what time it was. It has been too long for me—

Q. Were the students still out on strike at the time you attended that meeting?

A. That's right, they were still out on strike at the time I attended the meeting at the R. R. Morton School.

Q. A large number of people were present at that meeting, were there not?

A. That's right, a large number of people.

Q. And there was considerable speaking at that meeting; isn't that so?

A. Yes, sir.

Q. Wasn't one of the things discussed at this meeting a lawsuit to seek an end to racial segregation in the public schools of Prince Edward County—at that very meeting?

A. I don't remember that.

Q. Did you stay all the way through the whole meeting?

A. No, I didn't stay all the way through.

Q. When was the second meeting that you attended?

A. At the First Baptist Church in Farmville, on Main Street.

[fol. 371] Q. All right. The students were still out on strike at the time that the meeting was held and you say you know Mr. Oliver W. Hill?

A. Yes, sir.

Q. Don't you remember Mr. Hill speaking at that meeting?

A. Yes, I remember Mr. Hill speaking. That is why I say I knew him.

Q. Do you know my name?

A. I know it now, I didn't know it then.

Q. What is my name?

A. Mr. Spotswood W. Robinson.

Q. Don't you remember, since seeing me, of my speaking at that meeting?

A. Yes, sir.

Q. Of course you know Reverend Griffin?

A. Yes, sir.

Q. And you know Lester Banks?

A. Yes, sir.

Q. And you know Reverend Griffin?

A. Who was the first Griffin?

Q. L. Francis Griffin, Pastor of that Church.

A. Yes, sir.

Q. Don't you remember him speaking also?

A. I can't remember him. I can't remember him. As [fol. 372] I said a while ago, so much speaking was done it is hard to know just who everybody was.

Q. Do you remember a Miss Barbara Johns, one of the students out on strike?

A. Very well.

Q. Don't you remember her speaking.

A. Yes, sir.

Q. Mr. Bland, did you stay all the way through this meeting or did you just hear part of this meeting?

A. I stayed all the way through that meeting.

Q. You mean to say that you didn't hear discussed at that meeting, not briefly but all of the way through the entire meeting, the matter of the filing of a suit to end racial segregation in the public schools of Prince Edward County?

A. I don't remember the discussion, Mr. Robinson, of what was discussed but—

Q. Finish your answer.

A. Go ahead.

Q. Had you finished?

A. What I started to say, I do remember this, whatever was said was on the paper that I signed. I remember that.

Q. What was talked about at this meeting that wasn't on this paper that you signed?

[fol. 373] A. Well, it was so much that was talked about, it is hard to tell just exactly.

Q. Do you remember what it was?

A. The talk was in regard to the school. I know that.

Q. Can you remember just what the nature of the talk about the schools was? Can you remember that?

A. Not too much of it, no, sir.

Q. Do you remember any of it, Mr. Bland?

A. I know it was spoke about getting a school and about the opportunities, and so forth like that, but to come right down—I was sworn in to tell the truth, but to tell exactly what was said in this meeting, I am afraid to take a chance and try to tell. That has been in 1954.

Q. You just don't remember?

A. I don't remember.

Q. You said 1954?

A. Wasn't it in 1954?

Q. Wasn't it 1951?

A. I don't know, I thought it was '54. Whenever the school strike was.

Q. You don't remember when it was?

A. Whenever the school strike. I remember they had a school strike.

Q. You spoke about a paper that you signed; you signed [fol. 374] the paper that had to do with the school situation in Prince Edward County; isn't that correct?

A. Yes, sir, that's correct.

Mr. Robinson: If the Court please, this may be a little unusual, but I would like to terminate my cross examination of this witness until I can get my file from my office in the courtroom on the Prince Edward County school case. I want to question him about the paper about which he has given testimony.

Judge Soper: Very well.

Mr. Gravatt: You may stand aside.

Judge Soper: Do you want the witness to stay in attendance on court?

Mr. Robinson : Yes, Your Honor.

Judge Soper: Do you want him to stay in the courtroom or outside?

Mr. Robinson: I guess perhaps, if Your Honor please, it would be better to have him wait outside.

Judge Soper: Very well.

[fol. 375] ALMA R. RANDLE, called as a witness by the plaintiffs, being duly affirmed in behalf of the defendants, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. Your name is Alma R. Randle, I believe?

A. That is right.

Q. Where do you live, Alma?

A. Prince Edward County.

Q. You are one of the plaintiffs in the suit that was instituted against the School Board of Prince Edward County; is that correct?

A. I found that out about six months ago.

Q. Will you state whether or not you have ever authorized Mr. Oliver Hill or Mr. Spotswood Robinson to institute a suit for the integration of the public schools of Prince Edward County on your behalf?

A. All right. I work from 4 until 12. So we had a paper came from the school after this Prince Edward R. R. Morton School strike. This paper that my—my daughter told me that this paper was to sign for a better school because our children was out of school. I signed that paper laying in my bed.

[fol. 376] By Judge Soper:

Q. You did what?

A. I signed that paper laying in my bed for a better school.

Q. For a better schools in Prince Edward County because we didn't have any school worthwhile.

By Mr. Gravatt:

Q. Did you understand at the time that you signed the paper that it had anything to do with bringing a lawsuit?

A. I didn't have any idea it was going to bring any lawsuit.

Q. Would you have signed any paper if you had understood that what you were being asked to do, which was to bring about the mixing of the white and the colored children in the public schools of Prince Edward County?

A. No, I didn't know it was going to bring about the mixing of schools.

Q. Have you ever had any conversation with Mr. Oliver Hill or Mr. Spotswood Robinson?

A. I do not know Mr. Oliver Hill or Mr. Spotswood Robinson.

Q. Have you ever had any report from them with respect to any litigation that they were conducting in your name?

A. No more than what the school children bring me.

[fol. 377] Q. What did the school children bring you?

A. No more than what I heard the people in meetings and what the school children bring me.

Q. You never had any contact with them at all?

A. No, sir.

Q. When did you first learn that you were one of the parties in whose name that suit had been instituted?

A. Well, I reckon it has been about six months ago—well, this summer some men from somewhere out of the blue came there and was telling me about it, asking me questions about it.

Q. Did you know at that time that you were a party to a lawsuit against the School Board of Prince Edward County?

A. No, I didn't.

Q. Alma, have you at any time since this suit was instituted experienced any mistreatment from any white people in Prince Edward County?

A. Well, Lawyer Gravatt, no, I hadn't had any mistreatment because I reckon they just knowed I went going to take it so they didn't give it to me.

Q. Had your relations in the community been the same since this suit was brought as they were before?

A. Mine have.

Mr. Gravatt: You may examine.

[fol. 378] Cross examination.

By Mr. Robinson:

Q. Mrs. Randle, did you attend any meetings concerning the school situation in Prince Edward County during the time that the High School students at the Morton School were out on strike?

A. The onliest meeting I attended was at the Baptist Church.

Q. Wasn't this a meeting that was held during the time that the school children, all of them at the Morton High School, were out on strike?

A. They all were out on strike.

Q. A very large meeting was held at the First Baptist Church in Farmville?

A. That's right.

Q. Do you remember seeing me at that meeting?

A. I do not.

Q. Do you know Reverend L. Francis Griffin who is pastor of that church?

A. I know him personally because he was one of my personal friends.

Q. Was he at that meeting?

A. Yes, he was.

Q. Did you hear him have anything to say at that meeting?

[fol. 379] ing?

A. Yes, Mr. Griffin talked.

Q. And you still don't remember me saying anything at that meeting?

A. I don't remember you saying anything.

Q. Do you remember Miss Barbara Johns, who was one of the students out on strike?

A. I know her personally.

Q. You knew her quite well, didn't you?

A. Yes, sir.

Q. And you heard her speak at this meeting also?

A. I heard her speak at the Baptist Church.

Q. Wasn't the meeting called for the purpose of talking about the school situation?

A. That's right.

Q. That is all that was talked about at that meeting; isn't that so?

A. Yes, the school situation, but they didn't say mixing of schools, they said a better school, is what I understood. So I am not educated like you all and I didn't know about the non-segregated school. But we was fighting for a better school.

Q. Do you mean to say that during the course of this meeting you did not hear discussed, all of the way through that meeting, the matter of seeking opportunities in the [fol. 380] schools of Prince Edward County on a non-segregated basis? You didn't understand that from the meeting that you attended?

A. No, I did not.

Q. Did you stay all of the way through this meeting, Mrs. Randle?

A. I wasn't there when it began and I wasn't there when it ended.

Q. How long did you stay at this meeting? It must have been for a short space of time, wasn't it?

A. I know I was there over a half an hour.

Q. Over a half an hour?

A. Yes, sir.

Q. What went on while you were there?

A. Whilst I was there it was a Professor Banks talked and a Mr. Griffin and a Miss Barbara Johns.

Q. And that is all that you heard about this meeting?

A. Yes, sir, and then different parents.

Q. Didn't you attend some other meetings, Mrs. Randle, about this matter?

A. No, I did not.

Q. You didn't get to a meeting that was held in the basement of the First Baptist Church on this same day or on the same evening of the meeting to which you have testified, [fol. 381] but before the big meeting got under way? Did you attend that meeting?

A. No, I did not.

Q. Didn't you receive through the mail a notice requesting you to be present at a meeting to be held in the basement of the church prior to that time?

A. No, I did not.

Q. You deny that also?

A. Yes, sir.

Q. What is your employment, Mrs. Randle?

A. Right now, I am a housewife, but at that time I was working at the Berksville Veneer Shop as a furniture polisher, Berksville, Virginia.

Q. You read the newspapers, Mrs. Randle?

A. Sometimes when I find time.

Q. Were you reading the newspapers in 1951 when the Prince Edward School case was filed?

A. I guess I did, but I couldn't remember everything I read.

Q. Do you remember at any time reading anything about a suit being filed to end segregation in the public schools of Prince Edward County?

A. I may have read it.

Q. Don't you remember whether you did or didn't?

A. I may have read it, but I didn't know my name was [fol. 382] in there, I didn't see my own name.

Q. Did you read about it? Did you understand from reading the newspapers that a suit had been filed to end segregated schools in Prince Edward County?

A. Yes, I read that.

Q. You read that in the newspapers?

A. Yes, sir.

Q. And there was a lot of publicity about this in 1951 when the children were out on strike; isn't that so?

A. Yes, sir.

Q. There had been publicity about the strike before you signed this paper that you had referred to; isn't that so?

A. When I signed that paper, the children were out on strike, I reckon, about two weeks.

Q. About two or three weeks?

A. Yes, sir.

Q. And you actually signed this paper, didn't you, after this meeting that you had given testimony to? In other words, you signed the paper—

A. I signed the paper when the kids brought it home from school.

[fol. 383] Q. You stated you have not had any trouble with any of the people in Prince Edward County; you have not been harassed or you have not been annoyed or you have not been bothered to any extent since the school matter first arose in Prince Edward County?

A. No, sir, I haven't.

Q. You don't believe in unsegregated schools, do you, Mrs. Randle?

A. Well, I believe just this: If it passes for them to go together, it is all right with me, and if it don't, it is all right, but I wouldn't want to stay in the home with my husband if he didn't want me in there.

Judge Soper: I could not understand what she said.

A. (Continuing) I said, if it was passed for them to go together, it would be all right with me, but if they didn't want them to go together—I can speak for myself, I don't have any children in high school now, all of mine is finished—but I said if my husband didn't want me to stay in the home with him, I wouldn't want to be in there with him.

By Mr. Robinson:

Q. Let's get back to '51. Just how many children did you have attending the schools of Prince Edward County?

A. I had five graduated from R. R. Morton.

[fol. 384] Q. How many did you have in the schools when the strike occurred?

A. I had three there, two daughters and one son.

Q. Did you want them to have a non-segregated school education in 1951 when the strike occurred?

A. It was left to the children.

Q. Well, you had the same opinion in 1951 about segregated schools that you have now; is that correct?

A. I have the same opinion. It is left to them now.

Q. You have expressed your opinion on this matter to your friends and associates in Prince Edward County, have you not?

A. Yes, we have talked about it.

Q. Were you employed at the time this suit was filed?

A. Employed as what?

Q. Were you working for someone else at that time?

A. Yes, sir.

Q. Did you talk this matter over with your employer at that time?

A. Yes, we did.

Q. And you expressed to your employer about the same opinion about segregated schools that you have expressed here?

[fol. 385] A. Well, the young people on both sides think it is all right. They don't pay any attention to it.

Mr. Robinson: If Your Honor please, I am afraid I am going to have to ask the Court to indulge me with respect to this witness as with respect to the other witness. I would like the Court to indulge me just a few minutes to call my office to send me the part of the Prince Edward file I need. It is a very large file and if I do not explain it to the office, I don't think I will get the part I want.

Judge Soper: Certainly, Mr. Robinson. A great deal has been said—or I don't know that a great deal has been said, but the case has been mentioned from time to time during the taking of the testimony here and certain dates have been mentioned during the examination of these witnesses. It might clarify the record if there could be a statement as to just when the case was instituted and what it was about and the various steps in the litigation, so that the record would show at some place what we are talking about when we are talking about the Prince Edward suit. That can be done at your convenience.

[fol. 386] Mr. Gravatt: May it please the Court, Mr. Robinson is more familiar with it than I am. If he can prepare a statement, we can stipulate to it.

Judge Soper: So many of these cases will come up from time to time, we are likely to overlook it unless somebody puts it down. Would you like for us to suspend so you can use the telephone?

Mr. Robinson: I think, in order to expedite the matter, maybe Mr. Marshall and Mr. Carter could take over and I will do my telephoning and see if I can get what I need.

Judge Soper: All right.

Judge Hoffman: May I ask the witness a question?

By Judge Hoffman:

Q. Did you read the paper that they brought to you?

A. No, I never read it, because she just told me—said, "Mother, we have a paper came from the P.T.A. meeting," and I said, "What is it for?" She said, "You or Daddy, one, will have to sign it because it is for better schools."

Judge Soper: Is there any further examination of this witness at this time?

[fol. 387] Mr. Gravatt: No, sir, I have no further examination.

Judge Soper: You want to have the witness wait?

Mr. Robinson: Yes, sir.

The Court: Very well. Have the witness wait. Let us call another witness.

Mr. Gravatt: Maude Walker.

MAUDE E. WALKER, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. Your name is Maude Walker?

A. Yes, it is.

Q. Where do you live, please?

A. Well, my mailing address is Farmville.

Q. You are one of the plaintiffs in the suit that was instituted against the School Board in Prince Edward County, are you not?

A. Well, I haven't given nobody permission for no suit.

Q. Have you ever authorized any attorney to represent [fol. 388] sent you in a lawsuit against the School Board in Prince Edward?

A. No, I haven't.

Q. When was the first time that you found out that you were one of the plaintiffs in that suit?

A. Well, it was—I don't know what day, but it was two men from the School Board, they told me, from Richmond.

Q. The Boatwright Committee?

A. It was two men; I don't know what the name—

Q. They came and talked to you about it?

A. Yes, sir.

Q. Has it been since last fall?

A. I think it was June; I am not sure.

Q. And that was the first time that you knew that you were a participant in litigation against the School Board in Prince Edward?

A. Yes, that is what they told me.

Q. Maude, would you have authorized in your name a suit against the School Board for the purpose of mixing the white and colored children in the public schools of Prince Edward?

A. No, I wouldn't.

Q. Have you ever had any conversation with Mr. Oliver Hill or Mr. Spottswood Robinson?

[fol. 389] A. No, I haven't.

Q. Have you ever had any written communication from those two attorneys?

A. No, I haven't.

Q. Have you ever been advised by anybody with respect to the progress and the course of that litigation—that lawsuit?

A. No, I haven't been in touch with no one.

Q. Have you had anyone in Prince Edward County, especially white people, to mistreat you in any way because of your connection with this lawsuit?

A. No, I haven't.

Q. Have you noticed any difference whatever in your relations with the people in the County since the suit was brought, as compared to your relations with the people there before the suit was brought?

A. No, I haven't.

Mr. Gravatt: You may examine the witness.

Cross examination.

By Mr. Marshall:

Q. Mrs. Walker, have you attended any meetings in Farmville concerning the school strike at the Morton School?

A. One or two, when the children first left the school.
[fol. 390] Q. You attended them?

A. One or two.

Q. Did you attend the one at the Baptist Church?

A. I think one of them.

Q. The one where Reverend Griffin spoke?

A. I don't know whether it was Reverend Griffin or who spoke there.

Q. Was Mr. Hill at that meeting?

A. I don't even remember that.

Q. Do you remember anybody who was at the meeting?

A. I know once Mr. Robinson—I think it was Mr. Robinson—spoke.

Q. You were at the meeting?

A. One of them.

Q. What was discussed at that meeting?

A. Oh, I don't know.

Q. Did they discuss the question of the schools?

A. Well, they talked about better schools.

Q. Did they talk about non-segregated schools?

A. I don't remember.

Q. The first you knew you were a plaintiff in this lawsuit was a few months ago?

A. It was when those two men—they said they was from the Richmond School Board.

Q. What did they tell you?

[fol. 391] A. Well, they asked me if I knew I was plaintiff, or whatever you all call it.

Q. And you didn't know it?

A. No, I didn't know anything about it.

Q. And you did not know what purpose they were there for?

A. Until they told me.

Q. Then what did you tell them?

A. Well, I answered their questions the best I could.

Q. About the lawsuit?

A. They asked me did I want better schools, or was I for integration—I think that is what they asked me, along that line—and I told them no.

Q. You told them no? What do you mean by "no"? That you did not want integration?

A. I was satisfied with the school we had.

Q. And you told everybody around Prince Edward County where you would go that you were satisfied with the schools?

A. Nobody asked me.

Q. Did you tell your employer that you were satisfied with the schools?

A. I didn't have an employer; I am a housewife.

Q. Did you tell your friends you were satisfied with [fol. 392] them?

A. I told my friends I was satisfied with the school.

Q. You told people in general that, didn't you?

A. Yes, I told people in general.

Q. The point is, you did make it clear that you were not for desegregated schools?

A. I am satisfied with the school we have.

Q. Mrs. Walker, the point is, did you let people know that?

A. Well, I haven't been out discussing the schools with nobody.

Q. When was this case filed? Do you remember that?

A. No, I don't.

Q. Was it in the newspapers?

A. I don't take a newspaper.

Q. Do you read the newspapers?

A. Seldom.

Q. Did you ever read anything in there about this lawsuit?

A. I don't remember.

Q. Well, when did you first know that there was a lawsuit attacking segregation in the public schools of Prince Edward County?

A. Well, I have heard it in the news.

[fol. 393] Q. About when did you first hear it?

A. I couldn't tell you that, because I don't remember.

Q. Was it in '51?

A. I told you I couldn't tell you that because I don't remember.

Q. Well, you did know before these gentlemen talked to you that there had been a lawsuit filed attacking segregation in Prince Edward County?

A. I heard it in the news.

Q. Did you know at that time that you were one of the plaintiffs?

A. No, I didn't.

Q. Did you ever sign any paper?

A. I signed a paper, so the child told me—I had forgotten it until those two men came around and she told me about it. That was for better schools.

Q. That was your daughter?

A. Yes, my daughter.

Q. Did you read it?

A. Yes, but it wasn't but two lines, or two lines and a piece.

Q. What did it say?

A. I couldn't tell you word for word. It was for better schools.

[fol. 394] Q. Did it say anything about a lawsuit?

A. I don't remember anything about a lawsuit.

Q. Did it say anything about a lawyer?

A. I don't remember.

Q. Did it have any lawyers' names on it?

A. I don't remember.

Q. Are you in the habit of signing papers without reading them?

A. Well, my children were at the school and that was for better schools.

Q. And you did not read what was on it?

A. Yes, but I don't remember what was on it.

Q. Did you make any effort to find out whether it involved lawyers?

A. No, I didn't.

Q. Have you ever received any notice from these lawyers about a meeting?

A. No, no more than when the school first struck.

Q. Did you receive any notice?

A. I got one letter.

Q. Have you received any notice about an NAACP meeting in the county?

A. I don't remember any.

Mr. Marshall: Nothing further at this time, if Your Honor please. May we have her under the same rule?

[fol.395] Judge Soper: You want her to remain? Let her remain out in the hall.

SARAH ELIZABETH HICKS, called as a witness on behalf of the defendants, being duly affirmed, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. You are Sarah Elizabeth Hicks, are you not?

A. That's right.

Q. Where do you live?

A. I live about three miles from Rice.

Q. Is that in Prince Edward County?

A. Yes, sir.

Q. Did you know that you were one of the plaintiffs in a suit filed against the School Board in Prince Edward County for the purpose of compelling the mixing of the white and Negro races in the public schools of the County?

A. No, I didn't know that.

Q. Have you at any time authorized Mr. Oliver Hill or Mr. Spottswood Robinson to institute suit against the School Board of Prince Edward County on your behalf and in your name?

[fol.396] A. No, sir, I haven't.

Q. Have you ever had any conversation with Mr. Oliver Hill or Mr. Spottswood Robinson?

A. No, sir.

Q. Have you ever received any written communication from Mr. Oliver Hill or Mr. Spottswood Robinson?

A. No, sir.

Q. Since this suit was instituted, which was sometime in 1951, have you experienced any mistreatment at the hands of any white people in Prince Edward County?

A. Not to me.

Q. Have your relations with the people in Prince Edward County been as pleasant since this suit was instituted as they were before the suit was instituted?

A. Those I have had any dealings with.

Mr. Gravatt: You may examine.

Cross examination.

By Mr. Robinson:

Q. Mrs. Hicks, you remember when all of the children at the Negro high school went out on a strike in 1951?

A. Yes, sir, I remember.

Q. They stayed out about a couple of weeks at that time, did they not?

A. I don't know how many weeks it was; I know they [fol.397] stayed out.

Q. Every last student in the school walked out on that strike, didn't they?

A. Yes, sir.

Q. Do you remember attending some meetings that were held in Farmville at the time these children were out on strike?

A. Yes, I attended one or two meetings, but I didn't attend them all.

Q. Do you remember as a fact that the children walked out on strike on a Monday? That was the day of the week that the strike started?

A. I don't remember.

Q. Do you remember a meeting that was held in the basement of the First Baptist Church on a Wednesday afternoon during the first week of the strike, attended by a large number of the children and by some of the parents?

A. I remember some being there.

Q. You were present at that meeting?

A. At one or two of them, I was.

[fol.398] Q. Do you remember being present at this particular meeting? It was held on Wednesday afternoon, about 4, 5, or 6 o'clock in the basement of the First Baptist Church?

A. Well, I just don't remember.

Q. Do you remember a meeting that was held on the Thursday night of the first week of the strike at the Morton High School?

A. Yes, sir, I remember.

Q. You were present at that meeting?

A. Yes.

Q. How about another meeting that was held during the following week, I believe in the auditorium of the First Baptist Church? Were you present at that meeting?

A. No, I was not.

Q. You were not present at that meeting?

A. No.

Q. What other meeting were you present at in addition to the one that you said you attended at the Morton High School.

A. I went to one at the Baptist Church. I went several times to go to the meetings, but I never did go.

Q. You went to one at the Morton High School?

A. Yes, sir.

Q. And then you say you went to one at the Baptist Church?

[fol. 399] A. Yes, sir.

Q. And was this during the time that the children were out on strike?

A. This one at the school was.

Q. What about the one at the Baptist Church? Was that while the children were out on strike, just a few days before they went back to school?

A. I don't remember.

Q. Was it a large meeting attended by—

A. Yes, the church was full, but this was upstairs.

Q. Upstairs. That's right. You remember little Miss Barbara Johns who was one of the students there on strike?

A. No, I don't know her.

Q. You don't know her?

A. No.

Q. You know Reverend Griffin, do you?

A. Yes, I know Reverend Griffin.

Q. Didn't Reverend Griffin have something to say at this meeting, the one at the Baptist Church?

A. Bless if I remember, I just don't remember.

Q. Do you remember seeing me there?

A. No, I didn't even know you at the time.

Q. Since you have seen me, do you remember me being there?

[fol. 400] A. Well, I just don't remember.

Q. Do you know Mr. Oliver Hill, Attorney Oliver Hill from Richmond?

A. No, I don't know him.

Q. What went on at the meeting at the First Baptist Church? What of that meeting do you remember?

A. Well, now, you have done asked me a question. I just don't remember what went on at that meeting.

Q. All right. And you don't remember what went on at the meeting over at the Morton High School, do you?

A. No.

Q. You read the newspapers, don't you, Mrs. Hicks?

A. I don't even take the newspapers.

Q. Do you read the newspapers?

A. No, sir.

Q. Do you listen to the radio?

A. Very seldom.

Q. Did you know that there was a suit that had been filed in the courts to bring about an end to racial segregation in the public schools of Prince Edward County?

A. No, I didn't know that.

Q. You didn't even know that such a suit was in court or was filed in court in 1951?

A. I heard.

Q. Tell me what is it that you did hear. Just tell me [fol. 401] exactly what you heard.

A. I remember signing a paper for schools.

Q. No, I don't mean about the paper now. You said you heard something about something going on about the schools.

A. Yes, sir.

Q. What was it you heard?

A. I couldn't tell you what it was because I don't know.

Q. Did you ever hear that there was a case that went to the Supreme Court of the United States involving segregated education at Prince Edward County? You don't remember that either?

A. I think I remember it.

Q. I didn't hear you.

A. I think I remember that.

Q. All right. Now when did you first learn about that case? When did you first hear about that case?

A. I don't know. I can't remember all them things.

Judge Soper: Did this witness have children in school?

By Mr. Robinson:

Q. You had children in the schools?

A. I had one boy.

[fol. 402] Q. What was the name of that boy?

A. Lee Edward Hicks, Jr.

Q. The authorization or the paper that you said that you signed at one of these meetings that I asked you about?

A. Yes, I signed it at the school.

Mr. Robinson: I would like for this witness, if the Court please, to be held for further examination.

Judge Soper: Very well.

Redirect examination.

By Mr. Gravatt:

Q. Who and where did you sign this paper that you say you signed?

A. I signed it at the Morton School.

Q. What was the purpose of the paper as it was explained to you?

A. For a school.

Q. For a new school?

A. For a new school. That is what I signed it for.

Q. During this time, a new school has been built in Prince Edward County, has it not?

A. Yes, sir.

Q. That is a school for Negro children, I believe?

[fol. 403] A. Yes, sir.

Q. Is that school satisfactory with your four children?

A. Well, so far as I know it is all right, I reckon.

Judge Soper: Step down. Let her remain outside.

Mr. Gravatt: Rosa Bell Davis.

ROSA BELL DAVIS, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. Your name is Rosa Bell Davis?

A. That's right.

Q. Where do you live?

A. Prospect.

Q. Speak a little louder, if you please. What is your occupation?

A. Farming—housewife.

Q. Did you have children or a child in the R. R. Morton High School at the time that the children had a strike there?

[fol. 404] A. Yes, sir, I had two children in school at that time.

Q. Did you know that you are one of the plaintiffs in a lawsuit which was instituted following that strike against the School Board of Prince Edward County for the purpose mixing white and colored children in the public schools of the county? Did you know that you were a party to that suit?

A. No, I didn't know it was going to be a lawsuit.

Judge Hutcheson: Speak a little louder, can't you?

A. (Continuing) I said, no, I didn't know it was going to be a lawsuit when I signed that paper.

By Mr. Gravatt:

Q. If you can speak a little louder so the gentlemen can hear you—

A. I didn't it was going to be a lawsuit or anything about it when I signed the paper.

Q. What paper did you sign, please, and where?

A. I don't know what paper it was. I signed the paper at the R. R. Morton High School the night that they struck for a school.

Q. What was the purpose of your signature on that paper?

A. The purpose of signing the paper was for a school.
[fol. 405] Other than that—that is why I signed it, to get a school.

Q. You signed it to get a new school?

A. Yes.

Q. When did you first know that you were one of the plaintiffs or one of the people whose name this suit had been brought against the School Board in in Prince Edward? When did you first find out about that?

A. When the first lawyers came around asking us questions about it. I don't remember what month it was.

Q. Was that during this year?

A. Yes, sir.

Q. Have you ever had any oral, that is word conversation with Mr. Oliver Hill or Mr. Spottswood Robinson?

A. No, I haven't.

Q. Have you ever had any written communication from Mr. Oliver Hill or Mr. Spottswood Robinson?

A. No, I haven't.

Q. Has anybody, particularly white people, in Prince Edward County mistreated you in any way—

A. No, sir.

Q. —because of your participation in this lawsuit?

A. No, they haven't.

Q. Have your relations with people of the county been equally as pleasant since the lawsuit as they were before [fol. 406] the suit?

A. I would think so.

Mr. Gravatt: You may examine.

Cross examination.

By Mr. Robinson:

Q. Mrs. Davis, do you remember when 450 some children attending the Morton School walked out on strike during the spring of 1951? Do you remember when that happened?

A. Yes, I remember when it happened.

Q. And you attended the meeting that was held during the first week that those students remained out on strike, the meeting being held at the Morton High School and you were present at that meeting, were you not?

A. Yes, I was.

Q. How many people were there?

A. I don't remember.

Q. You don't remember?

A. No.

Q. A large number or a small number? Do you remember that?

A. A large number.

Q. A large number; isn't that so?

A. Yes.

[fol. 407] Q. Wasn't there a lot of speech making at this meeting?

A. Yes, sir, there was.

Q. Do you remember the names of some of the people that spoke?

A. I don't know right now whether I remember the names or not.

Q. Do you remember what they talked about at this meeting?

A. I don't know none of the exact words they said. It has been so long now I can't remember.

Q. Don't you remember, generally, what they said? Don't you remember them talking about—

A. I remember them talking about getting the new school.

Q. Don't you remember they were talking about breaking segregation in the public schools of Prince Edward County?

A. I don't remember that.

Q. Do you know Mr. W. Lester Banks, who is connected with the State Conference of the NAACP?

A. No.

Q. Do you remember anyone from the NAACP being present at this meeting and having something to say?

A. Do I remember them being at the school that night?

[fol. 408] Q. Yes, and having something to say at this meeting?

A. I don't remember.

Q. Isn't it a fact that you don't remember very much about this meeting at all?

A. I most certainly don't.

Q. It has been so long ago that you have forgotten; isn't that the truth?

A. That's right.

Q. How about another big meeting that was held during the following week in the auditorium of the First Baptist Church in Farmville? Did you attend that meeting?

A. I don't remember being any more of the meetings.

Q. Wasn't that the only meeting you attended?

A. That was the only one, at the school.

Q. It was at that meeting that you signed a paper of some sort?

A. Yes, at the school.

Q. Did you read the paper before you signed it?

A. I most certainly didn't.

Q. I didn't hear your answer.

A. No, I didn't read it.

Q. You didn't read the paper before you signed it?

A. No.

Q. Do you read the newspapers, Mrs. Davis?

[fol. 409] A. Not very much.

Q. Do you listen to the radio?

A. Yes.

Q. I didn't hear your answer.

A. Yes, I do.

Q. Didn't you understand that a suit was filed seeking an end to racial segregation in the high schools of Prince Edward County?

A. No.

Q. You haven't heard that before?

A. I heard it when—

Q. Can you speak just a little louder? I can hardly hear you.

A. When the lawyers came around questioning me about it.

Q. When you say the lawyers, don't you mean some people who were investigating for one of the legislative committees in Virginia somewhere in the year 1957? Aren't they the people that you have been calling lawyers here this morning? They are the people that you are talking about?

A. The ones that came around to the house asking questions.

Q. Asking questions. And they did that a few months ago; isn't that correct?

[fol. 410] A. Yes.

Q. During this year?

A. Yes.

Q. And the meeting that you testified to and the paper that you signed was a meeting held and a paper signed way back in 1951 when the children were out on a strike; isn't that so?

A. Yes, sir.

Q. Before these came around this year to ask you questions, didn't you know about a case that was in the courts, including the Supreme Court of the United States, involving the matter of racial segregation in the public schools of Prince Edward County?

A. No.

Mr. Robinson: I would like for this witness also to be held.

Judge Soper: All right. Let this witness retire and remain outside. That is all.

Mr. Gravatt: Call Robert Drakeford.

ROBERT DRAKEFORD, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

[fol. 411] Direct examination.

By Mr. Gravatt:

Q. Your name is Robert Drakeford, is it not?

A. Yes, sir.

Q. Where is your home?

A. Charlottesville, Virginia.

Q. What is your occupation?

A. Waiter.

Q. Where?

A. Thomas Jefferson Inn.

Q. Robert, you are one of the plaintiffs in a suit instituted for the purpose of integrating the public schools in Charlottesville, are you not?

A. Yes.

Q. Will you state how you became a plaintiff in that suit?

A. Well, I didn't—didn't nobody tell me anything about it. I did that on my own. I didn't see anyone and nobody didn't say anything to me about it. When I went to the meeting, I got in there they were setting around signing those blanks and I asked some of the persons in the place what were they signing. They said they were signing for the integrated schools. And I said, "I think I will sign one, too," because I had two kids that were eligible for [fol. 412] school.

Q. Where was that meeting held?

A. In the Ebenezer Baptist Church.

Q. Under what auspices was it held?

A. If I am not mistaken, I think it was Charlie Fowler.

Q. This was an NAACP meeting?

A. Yes, sir.

Q. And the purpose of the meeting was to get people to sign up to bring this suit?

A. Well, I didn't get the whole thing of the whole meeting because I got in there late. When I got in there, the meeting was practically over. And I just asked some of the people in there what was they signing? "We are signing for an integrated school."

Q. Were any attorneys present?

A. I think Mr. Robinson—not Mr. Robinson, Mr. Hill, I think he was there.

Q. Have you had any conversation with Mr. Hill or Mr. Robinson since the suit was instituted?

A. No, sir, I have not.

Q. Have you had any written correspondence or report from either of them about the lawsuit?

A. No, sir, not either one of them.

Q. Your contacts have all been through the NAACP? [fol. 413] A. Yes, sir.

Q. And they are the people who got the names and had everything signed up for the attorneys?

A. Well, I don't know about that. I signed this so long I don't remember.

Mr. Gravatt: That is all.

Cross examination.

By Mr. Robinson:

Q. Mr. Drakeford, is it?

A. Yes, sir.

Q. Let's get a few things straight. When was this meeting that you attended when it was almost all over and signed a paper of some sort? When was that meeting held?

A. I can't recall.

Q. About when was it?

A. I think it was '55.

Q. Where was it held? Do you remember that?

A. Ebenezer Baptist Church.

Q. You said Mr. Oliver W. Hill was present at that meeting?

A. I think he was, yes, sir.

Q. How did you find out about the meeting?

A. Well, the boy told me that the NAACP meeting was going on.

[fol. 414] Q. Who told you that?

A. Raymond Bell.

Q. That is how you learned about it?

A. That is how I learned about it.

Q. When you went over there, didn't you find a number of other parents of school children of the City of Charlottesville?

A. I sure did.

Q. Was there any discussion at all during the time you were there?

A. No, sir, it wasn't no discussion.

Q. No discussion at all?

A. No, sir.

Q. Where did you get your information then that the purpose of that meeting was to talk about integrated schools in Charlottesville?

A. I asked one of my clients setting next to me—

Q. One of your what?

A. When I went in the meeting, the thing was just about over. And I asked my next—person setting next

to me what they were signing the paper for and he said they were signing for integrated schools.

Q. For integrated schools?

A. Yes, sir.

Q. And then you asked for a paper to sign one also? [fol. 415] A. I sure did.

Q. How many children did you have in school at that time, Mr. Drakeford?

A. Well, I had two.

Q. You signed the paper right at that meeting, did you?

A. Yes, sir.

Q. Did you read the paper before you signed it?

A. Well, yes, sir, I read it the best I could.

Q. You understood that the purpose of the meeting was to get non-segregated education? That was your understanding?

A. That's right.

Q. And you signed the paper in order that Mr. Hill could represent you also in an effort to accomplish that objective; isn't that why you signed it?

A. That's right.

Mr. Robinson: That is all.

Mr. Gravatt: Step down.

Mr. Robinson: If the Court please, I would like to make this request. I would like for this witness to be held until this afternoon.

Judge Soper: Very well.

[fol. 416] MOSES C. MAUPIN, called as a witness by the plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. Your name is Moses C. Maupin?

A. Yes, sir.

Q. Where do you live?

A. Charlottesville, Virginia.

Q. What is your occupation, Moses?

A. I am a cashier at the Albemarle Hotel.

Judge Hoffman: Would you please turn around and face over here when you answer the questions, if you don't mind? I did not understand his answer.

Mr. Gravatt: Cashier.

Judge Hoffman: Cashier of the Albemarle Hotel in Charlottesville.

Mr. Gravatt: Yes, sir.

By Mr. Gravatt:

Q. Moses, you are a named plaintiff in a suit brought in the City of Charlottesville, for the purpose of integrating white and colored children in the public schools of that city; is that correct?

A. Yes, sir.

[fol. 417] Q. Will you state how you became a plaintiff in that suit?

A. When I joined the NAACP, why I joined it for anything that would come up to the betterment of the colored children.

Judge Soper: See if you can't speak a little louder.

A. (Continuing) I say, when I joined the NAACP, I joined it for the betterment for the colored children and I wanted my child to get, or the colored children to get, the benefit of everything that was good.

By Mr. Gravatt:

Q. Who approached you and where was this matter brought to your attention?

A. Well, it was at the Mount Zion Baptist Church when we had the meeting there.

Q. That was a NAACP meeting?

A. Yes, sir.

Q. Who spoke at that meeting, Moses?

A. Well, it was just—it wasn't any public speaking, it was just a get-together meeting.

Q. Just a get-together meeting?

A. Yes, sir.

Q. Was any attorney present there?

A. No, sir, not that I know of.
[fol. 418] Q. What did you do at that meeting to become a plaintiff in this suit?

A. Well, whoever wanted the children to go to an integrated school signed their names.

Q. Who asked you to sign?

A. Nobody asked us to sign, we signed if we pleased.

Q. Who had the paper?

A. Nobody had the paper, it was laying on the desk—laying on the table there. Mr. Fowler was the president at the time and we were not persuaded or told to sign, we signed if we wanted to.

Q. Has Lester Banks talked with you about your testimony here this morning while you were standing out in the hall?

A. No, sir.

Q. Has anybody talked to you?

A. No, sir, nobody.

Mr. Gravatt: That is all.

Mr. Robinson: We have no questions, Your Honors.

Mr. Gravatt: If Your Honor please, there is one other witness that is summonsed and apparently is not here. I would like to have him called again. John O. Watson.

(The witness was called.)

Deputy Marshal Longbeam: He is not here.

[fol. 419] C. W. Woodson, Jr., called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you please state your name, address, and occupation, please?

A. C. W. Woodson, Jr.; I live at 7618 Hollins Road, Richmond, Virginia; I am Superintendent of the Virginia State Police.

Q. Will you state, briefly, your background and experience in law enforcement work?

A. I joined the Virginia State Police Department in 1932 and I have been promoted through the ranks until I was appointed in 1942 by Governor Darden as Superintendent of the Department.

Q. During that time, did you attend any schools in police work?

A. A number.

Q. Will you state a few to the Court, please?

Mr. Carter: If the Court please, I don't know where this testimony is going, but so far it seems to us that it has no relevancy to anything here.

Judge Soper: I think it is rather asking too much of [fol. 420] us to rule on something that you do not understand and we do not either. I think the testimony may be developed to see what it is about.

By Mr. Wickham:

Q. (Continuing) I will repeat my question. Will you name a few of the schools which you attended during your period in police work?

A. The Harvard School in Homicide Investigation, the F. B. I. National Academy, certain extension courses from the University of Virginia, University of Richmond, University of Oklahoma.

Q. If racial disturbance occurred in the state, what action would you have to take?

A. The Department of State Police was created primarily as a traffic controlling and traffic law enforcement agency and we of course will do that, but we would of course enforce the law in keeping with the statutes.

Q. Chapter 32 of the Acts of the General Assembly, Extra Session 1956, which is the statute in litigation here, requires, among other things, the filing of membership lists of organizations engaged in racial activities. Are you generally familiar with that law?

A. Generally.

Q. Have you had any experience in the past in which [fol. 421] you had occasion to use membership lists of organizations in your police work?

A. Well, of course, in a police organization you are constantly dealing with files and things of that nature. I think perhaps, in answer to your question, the closest thing I could cite here in dealing with lists would be, when I was a trooper stationed in Charlotte County, I used to go by the Commissioner of Revenue's office of each of the counties I worked (I worked several counties) and I would make for myself a list of all the people who had purchased automobiles in each of the counties, for the purpose of working from those lists from day to day in my routine work.

Q. What use would you make of those lists?

A. Well, as I would ride along in my car, I would see something that I wanted to check in the way of a car and I would just ride along and check it to see whether it had an improper tag, or anything of that nature.

Q. In other words, it helped you in your law-enforcement work?

A. It did.

Q. What use, if any, would a membership list of those organizations engaged in racial activities be to you in the event of racial disturbance in the State of Virginia? [fol. 422] A. Well, I think that any information—files, lists, or any information of any nature whatsoever—would be of help in law enforcement.

Q. Could you be more specific? Would it help you, for example, to prevent racial disturbance?

A. In answer to the question as to whether it would prevent it or not, I do not know whether as a law enforcement administrator I could prevent it or not, but it would perhaps aid in dealing with the matter.

Mr. Wickham: No further questions.

Cross examination.

By Mr. Carter:

Q. Mr. Woodson—I think is the name?

A. Yes.

Q. Suppose the list you had were a list consisting of 13 or 14,000 people; what help would that be to you in the enforcement of Chapter 31, or any law?

A. Well, if it were a list of 13 or 14,000 people we would have that many names rather than as many as live in the State of Virginia.

Q. What relation would the list of members of these organizations have to do with the racial unrest that you testified about? As a law enforcement officer, you have a list of 13,000 people in an organization involving racial [fol. 423] matters; you have a racial conflict of some kind; now, what relation would that list of 13,000 people have to the unrest?

A. I gather it was an organization engaged in racial activities?

Q. Yes.

A. We would get, perhaps, from that list the names and scrutinize the names there more than we would the names of people not engaged in racial activities.

Q. What relation would that have to the incident which you were called upon to stop—the unrest that you were called upon to deal with?

A. Well, I don't think it would serve any harm to have the list and I can conceive it would be of aid.

Q. Of aid?

A. Of aid.

By Mr. Robinson:

Q. Colonel Woodson, you are familiar with Chapter 33? I mean, you are quite familiar with it, aren't you?

A. Just generally speaking.

Q. Well, didn't you have something to do with the formulation of Chapter 32?

A. No.

Q. Didn't you talk to the General Assembly about 32? [fol. 424] A. No.

Q. You mean, the facts you are expressing here you did not communicate to the General Assembly before Chapter 32 was enacted?

A. I did not.

Q. Now, assuming, as Mr. Carter has asked you, that you have a list of some 13 or 14,000 members of an organization engaged in racial activities, and assuming that there has been a disturbance of some sort in the state;

how do you even get to use the list? Do you just assume that because there was a disturbance you should scrutinize those 13 or 14,000 names on this list?

A. Not necessarily so. I—

Q. How would you determine whether or not to resort to the list at all?

A. Well, I think it would be an added source of information, among many other factors, perhaps, that law enforcement conceivably might find of aid.

Q. Do you think this list would play any really important part in any investigation you would make of an incident of the character that you have mentioned here today?

A. It would depend upon the type of alleged violations at the time.

Q. You would be interested, in other words, in finding [fol. 425] out the members of a particular organization engaged in racial activities? That is all you could get from the list; isn't that so?

A. As I understand it.

Q. You would not be interested in people who were not members of the organization, who just make contributions to that organization?

A. In dealing with—

Q. In dealing with the incident you have theorized about here.

A. Not unless he were engaged in violation of the law.

Q. You would not need a list of persons who had contributed money to that organization, would you?

A. As such, no.

Q. It would not help you a bit, would it?

A. On that particular point, no.

Mr. Robinson: That is all.

Mr. Carter: I have one question.

By Mr. Carter:

Q. You testified that you had taken various courses. One of the courses that you took was a course in race relations? Was that one of your courses?

A. No.

Mr. Carter: That is all.

[fol. 426]

Redirect examination.

By Mr. Gravatt:

Q. Colonel Woodson, if you had a list as required by this Section of the Code, it would be a list not only of the members of the National Association for the Advancement of Colored People, it would be a list of the members of all organizations presently existing and which might be formed in Virginia to promote or interest themselves in racial matters. If you had a disturbance of a racial nature—a school were bombed, or some untoward act in some specific community in Virginia—could you not take that list and identify individuals who were in positions of leadership in organizations in behalf of their race?

A. I feel that it would be of aid, yes.

Q. You could do that. And would not that be a source of investigation that would be one of the prime sources to pursue in such eventuality?

A. It would be an added source of information.

By Judge Hoffman:

Q. Colonel, are you not already familiar with the names of certain leaders of the organization known as the NAACP, as well as the organization promoting segregation in Virginia?

A. Generally speaking.

Q. So that you could go to those leaders and secure the [fol. 427] same information you would get on the list? As a matter of fact, wouldn't you go to that first, rather than go down the list of maybe some 50,000 names on both sides?

A. It would depend upon the disturbance at the time and the factors involved, I believe.

By Mr. Gravatt:

Q. Colonel, do you know who the leaders are in the communities over the state? You might know who the officials are, but do you know who would be in positions of leadership in these organizations on the local level say in Charlotte County, Appomattox, or Halifax?

A. I do not.

By Judge Hoffman:

Q. Would the local police probably be advised of that information?

A. In all probability.

Judge Soper: That is all. Thank you, Colonel.

[fol. 428] HERBERT B. ADAMS, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you please state your name, address, and occupation?

A. My name is Herbert B. Adams; I live at Buckingham Courthouse; I am the Sheriff of Buckingham County.

Q. Will you address your answers to the Court, please. How long have you been Sheriff of Buckingham County?

A. About ten years.

Q. What type of work did you do during World War II, Sheriff?

A. I was an officer in Naval Intelligence, in the Investigation Section.

Q. Briefly, what type of work did that entail?

A. We made investigations on all people we suspected—where there was suspected sabotage, and we also investigated persons that were handling confidential information, to get the right people in the right positions, where they would not get information that was not—or did not have the right feeling toward the United States Government.
[fol. 429] Q. In other words, you had to investigate people for employment before they were employed by the federal government; is that correct?

A. That is correct.

Q. In that type of investigation, did you have any aids of any kind to use, to aid you or help you in that type of work?

A. Repeat that question, please.

Q. I say, did you have any aids to assist you in that type of investigation? I mean, what did you use?

A. Yes, we did. We kept a file on all persons that we thought were un-American and ones that had been proven to be.

Q. Well, is it true, generally speaking, that law enforcement officials feel that membership lists are very helpful to their investigations?

A. Yes, sir, we certainly do, because we don't want to get anyone in there that is creating a disturbance, or we suspect any organization that may create a disturbance. If that organization is creating a disturbance, we don't want to employ anyone in a strategic place.

Q. Sheriff, what is the percentage of white and Negro citizens in your county?

A. Approximately 45 percent are colored and 55 percent white.

[fol. 430] Q. What would you say is the relationship between the two races at this time?

A. It is very good.

Q. If there were integration in the public schools in your county, do you feel that the relationship between the two races would change?

A. Yes, sir, I really do.

Q. Have you read Chapter 32 of the Acts of the Assembly of 1956 at the Extra Session?

A. Yes, sir.

Q. Are you generally familiar with the requirements of that section?

A. I am generally familiar with them, yes, sir.

Q. In your opinion, would the requirements of that chapter be of any assistance to you in case of racial disturbance in the county?

Mr. Robinson: If Your Honor please, I don't think the witness can express an opinion of that sort. If the witness has factual information he can testify about that would have bearing on the issue, he can state that, but not express an opinion of the kind that Mr. Wickham is asking for.

Mr. Wickham: I will rephrase my question.

Judge Soper: Very well.

[fol. 431] By Mr. Wickham:

Q. In what way, if at all, would the requirements of Chapter 32 assist you in a racial disturbance existing in your county?

A. I think by having all organizations to register, it would assist us in this manner: If you knew that that organization was back of that disturbance, you would hesitate to employ someone as a deputy sheriff or to assist you in trying to keep down trouble.

Q. At this time, how many deputies do you have in your county?

A. I have four deputies, three part-time and one full-time.

Q. If a racial disturbance of any proportion occurred in your county, would you consider that you had sufficient deputies?

A. I definitely would not.

Q. Well, what would you do in event of a racial disturbance of some proportion that took place in your county?

A. I would have to employ additional deputies in order to keep the peace.

Q. In your position as Sheriff, do you travel around the county quite often?

A. Yes, sir, I travel around.

[fol. 432] Q. Do you of your own knowledge know any economic reprisals against the Negroes in your county?

A. No, sir; no, sir, I do not.

By Judge Soper:

Q. What is the population, Sheriff?

A. Approximately 12,500.

Q. 12,000?

A. 12,500, yes, sir.

Mr. Wickham: That is all.

By Judge Hoffman:

Q. What is the square-mile area?

A. 586 square miles.

Cross examination.

By Mr. Carter:

Q. Do you know whether or not the NAACP—do you know that organization?

A. I have heard that it stood for the National Association for the Advancement of Colored People. I am not sure what it means.

Judge Soper: I did not hear your answer.

The Witness: I say that I have heard it stood for the National Association for the Advancement of Colored People. I am not sure whether that is right or not. I wouldn't know, actually.

[fol. 433] By Mr. Carter:

Q. Do you know whether that organization has held any public meetings in the county from which you come?

A. I could not say that I know it, no, sir.

Q. You could not say. Now, if I am correct in understanding your testimony, there were 45 percent Negroes in your county?

A. I said approximately that. I don't have the figures exactly

Q. And you are the Sheriff of the County?

A. That is correct.

Q. How many law enforcement officers on your staff?

A. I have four other than myself.

Q. How many are Negroes?

A. Not any.

Q. None are Negroes?

A. No.

Q. And this list that you think would be of help to you—and we are talking now about the Association, the NAACP—if a racial disturbance occurred in your community and you had a list of the members of the NAACP, what relation would that have to you to solving or quieting or doing anything with the racial disturbance that took place?

A. Now, if I had that list and some of the members of [fol. 434] the NAACP were creating this disturbance, I

think it would be beneficial to me if I could go to the leader—see what I mean? And then I could cooperate with him and I think that we could have a better understanding and get it straightened out. That is what I think about it.

Q. I see. Do you know the leaders in the Negro community and in the white community in your area? You know them personally, don't you?

A. Oh, yes, I know them.

Q. Aren't they the people, without regard to membership in any organization, from whom you would seek aid in solving any unrest that occurred?

A. Yes, I would like to see the leading ones, that is true. You always do that in every community—you always try to see the leading citizens—if that is what you mean.

Q. That is what I mean. They are the people that you rely upon, without regard to whether they belong to any organization of any kind, or whether you had a list or not? They are the people you would talk to and say, "Come and help me solve this problem, so we can have peace and freedom."

A. Yes, sir, if you knew he belonged to an organization, just as if I belonged to an organization and had someone to look to—see what I mean? I think they would listen to my [fol. 435] argument much better—see what I mean?

Q. They would listen to your argument?

A. Yes.

By Mr. Robinson:

Q. Mr. Adams, I understood you to say that you have been Sheriff of Buckingham County how long?

A. It will be ten years the first of January.

Q. As I understand, you want this list of members of any organization engaged in racial activity to be used for your own purposes in selecting your own deputies? Isn't that what you testified a few minutes ago?

A. No. I think it depends a lot on the individual, too—see what I mean?

Q. Wouldn't you take into consideration in employing deputies the fact that a person whom you might have in mind belonged to the NAACP?

A. Repeat that question, please.

Q. You are about to appoint a deputy: Would you take into consideration at the time that you were considering the appointment of a particular person, the fact that the person that you had in mind belonged to the NAACP? Wouldn't you take that into consideration in making your determination as to whether you were going to appoint him as a deputy?

A. I think that would go entirely on the individual.

[fol. 436] Q. No, I am asking you this: Would you or would you not consider that factor in making that appointment?

A. No—

Q. You would not pay any attention at all to whether a person belonged to an organization engaged in racial activities in appointing him one of your deputies?

A. If I thought he was involved in it, yes; I wouldn't think of appointing him.

Q. No, suppose nothing had happened; you have in mind Citizen A and you are thinking about appointing him as one of your deputies and you know he is a member of the NAACP; would not that fact influence your appointment of him?

A. No, sir.

Q. Didn't you say a few moments ago that you thought racial non-segregation might promote racial disturbance, might bring about disorder, and that type of thing?

A. That's right.

Q. Don't you think that a person who belongs to an organization that advocates racial discrimination—don't you think he is less fit, from your viewpoint, for appointment as one of your deputies?

A. I think that depends on the individual.

Q. Suppose you had a list of all the members of the [fol. 437] NAACP and a list of all the members of all organizations in Virginia engaged in the field of racial activities—

Judge Soper: White or colored?

Mr. Robinson: White or colored.

Q. (Continuing) —and suppose a racial disturbance occurs in your county; what are you going to do with these lists?

A. Well, if that organization is backing that disturbance, then that will help you in order to contact those people. I quoted that a while ago—contact those people that are the head of it and see if you can't curb the disturbance that is taking place at the time.

Q. So, these lists would not do you a bit of good unless you first ascertained that one of these organizations was responsible for the disturbance that had occurred?

A. Well, I wouldn't say that.

Q. Well, what would you say? Didn't I understand you to say, Mr. Adams, that you would look at the list of the members of these organizations if, and only if, you had determined that such organization was responsible for the disorder?

A. No; I would look at it beforehand and, if I knew that it had, I would do that.

Q. Let's get back to where I was a moment ago. Let's assume that disorder has occurred in Buckingham County. [fol. 438] Now, at what point do you begin to use the lists, and for what purpose?

A. It is like I said: If that organization—any organization; I am not talking about the NAACP or anyone else; in fact, I never would have mentioned it if you had not said something about it—see? But any organization that I thought would back any disturbance—I think that then you can go to the head of that organization and seek help from him, and I don't see why he would not help, if he is the right kind of person—see?

Q. And that is all the good a list would do you; isn't that so?

A. That is one thing I am stating.

Q. Now, what other thing would you get from the list? Would you mind telling me that?

A. Well, that is the main thing.

Q. All right. Can you think of anything else in the way of good that you could get from using this list? It is not going to help you in any other way, Mr. Adams, is it?

A. I don't know. It may do it.

Q. Well, you can't think of any other way it would help you, can you?

A. Not right off.

Q. All right. Wouldn't you do just as well if you had [fol. 439] a list of the principal officers of these organizations as you would if you had a list of the entire membership? Would not a list of the officers of the organizations suit your purposes as well as a list of the entire membership?

A. No, I don't think so.

Q. Well, all you want is the names of the leaders of the organizations in your community?

A. No, but suppose I had to employ additional deputies; then I would like to know whether he belonged to it.

Q. All right. And if he did belong to the NAACP, you would not appoint him; isn't that so?

A. No, I haven't said that.

Q. Well, all right. You have looked at the list to determine whether he belongs to the organization and you have determined he belongs to the NAACP. What do you do then? Do you hire him, or don't you?

A. I think it depends on the individual entirely.

Q. Then, the list would not help you at all, but you would make the determination on his individual qualifications?

A. No, I haven't said that.

Q. Well, what do you do? There has been a disorder and you need additional deputies, and you have the list [fol. 440] that shows the names of the various organizations, including the NAACP, and you have in mind the employment of a particular person as one of your additional deputies, and you look at the list and you see that he belongs to the NAACP; now, do you mean to say that you would still, irrespective of the fact that he belongs to the NAACP, consider the matter of his appointment on this individual basis and you would completely disregard the fact that he belonged to the NAACP?

A. Yes, because he may be able to help me more than anyone else could.

[fol. 441] Q. By reason of what?

A. Because he knows—he is familiar with them, he is a member, he is a member of an organization. Someone in that organization may be of more help to you than someone else.

Q. Have you ever asked anybody that you were about to appoint as a deputy whether he belonged to the NAACP? Have you ever done that?

A. No, I haven't.

Q. Mr. Adams, I would like to get back to this. You want the list, don't you, so that you can talk to the people who head the different organizations, talk it over and see whether, as you said, you can't reach an understanding and bring about a termination of whatever disorder there has been? Now that is what you want the list for, isn't that so?

A. To see if they are responsible for it, yes.

Q. To see if they are responsible for it?

A. Is that what you asked me? Please rephrase your question.

Q. Let me go about it this way. You have a list, using the figures assumed by Judge Hoffman, of say 50,000 people, white and colored, belonging to organizations engaged in the field of race relations, some pro-segregation, some pro-integration. Now you have that long list of [fol. 442] people and there has occurred a disorder in your community and in the beginning you don't know who is responsible for it, whether it has racial origin or not. Please, sir, would you tell me this time what you would do with that list and for what purpose you would resort to that list?

A. Well, I think—I intended to make myself plain a while ago there. We would use that list and if you knew that someone was in—in that organization was creating a disturbance, it would assist you in knowing who they are and then you could determine better as to the type of man that you would like to employ, see, that you would employ.

Q. You mean to say that if you had a list of 50,000 citizens that every time you had some disturbance of the public peace in Buckingham County you are going to sit down and go through that list in order to determine

whether or not there is somebody on that list who can do you some good in your investigation?

Mr. Wickham: If Your Honor please, I believe the testimony is that in the event of a racial disturbance, not just a breach of the public peace. I think that counsel is confusing the witness by misleading him in his questions.

Judge Soper: I think the cross examination may proceed. The Sheriff is an intelligent man. I think he knows [fol. 443] what the questions are, at least he seems to me he does.

By Judge Soper:

Q. May I ask you this, Sheriff. If a disturbance had occurred and you wanted to find out who the offender was, something that might have been done in the dark of the night, some offense committed on some individual or some property, would the list of names, either of white organizations or of colored organizations, be of any use to you in endeavoring to find who perpetrated the crime?

A. Yes, sir, I definitely think so, Judge, Your Honor.

By Mr. Robinson:

Q. In what way, Sheriff?

A. I thought I had made myself clear. I am very sorry if I haven't, Your Honor.

Q. Just state, briefly, now in what way would that list enable you or assist you in determining who perpetrated the offense?

A. Well, that all depends on what happened. If it was a racial—that is what you have reference to?

Q. I have reference to any disturbance of the peace.

A. I see. Well, not necessarily. It would help you if you had something else—

Q. In other words, you would first have to find out [fol. 444] that some one of these organizations was behind the incident before this list would help you?

A. That is the time that it would help you more than any other time.

Q. Let us assume, Sheriff, that a suit was filed in Buckingham County to end racial segregation in the schools

of that county, and let us assume that after the filing of that suit there was a public disorder, it would be your that such a disorder would be quite probable; isn't that so?

A. Yes.

Q. Now let us assume that there is a public disorder. Let us assume that it is known that the NAACP was financing the litigation involving the attempted ending of school segregation in Buckingham County, wouldn't you assume that the NAACP was responsible for that disorder? Wouldn't assume that the organization that filed a suit to end racial segregation which, in your opinion, would be promotive of public disorder, was responsible for that disorder?

A. I would hate to accuse anyone of creating a disturbance.

Q. Yes. But you would think, in your own mind, that the NAACP was responsible for that disorder, wouldn't, Sheriff?

A. I said I would hate to accuse anyone of creating disorder anywhere.

[fol. 445] Q. Whether you would accuse them or not, that would be your belief, wouldn't it?

A. What we believe and what we say, I mean, may be two different things.

Q. Can't you tell me whether or not you wouldn't believe, yourself, under those circumstances whether you would accuse or not that the NAACP was responsible for that disorder?

A. I may state that so far as our relations to the colored people in Buckingham County, it is very good, sir.

Q. But I didn't ask you that, Sheriff.

Judge Soper: I think your question is a little difficult to answer because when you use the word "responsible" it might mean that the mere fact of having a lawsuit was ultimately responsible as the first moving cause. The Sheriff would be interested, I assume, in who actually perpetrated the disorder and I am not sure that you make clear to him which of those two things you are talking about.

By Mr. Robinson:

Q. Sheriff, let me ask you this: You are of the opinion that the filing of a suit to desegregate Buckingham County public schools might indeed bring about public disorder; that is your opinion, isn't it?

A. The filing of the suit wouldn't do it.

Q. You don't think so?

[fol. 446] A. But when they integrate, then it is a different proposition.

Mr. Robinson: That is all.

Redirect examination.

By Mr. Gravatt:

Q. Mr. Adams, let us assume that a suit has been brought, that an order has been entered directing the admission of Negro children to a school in Buckingham County that had theretofore been solely for the attendance of white children, would that create a situation of tension within your county?

A. It certainly would, yes, sir.

Q. If upon the eve of the day that the school were to go to school, a person engaged in activity such as Mr. John Kasper been engaged in were to come into your community and undertake to organize, set up one of his organizations and to conduct activities that he has been conducting in other places, would the fact that he would have to register himself and that he would have to register each one of the people who associated with him in that endeavor be of tremendous assistance to you in the protection of the public schools and in the protection of the colored people in your community?

A. It certainly would.

[fol. 447] Mr. Gravatt: That is all.

Recross examination.

By Mr. Robinson:

Q. Sheriff, as a public officer, is it your opinion, and would you honestly believe, that a person who would break a law

by bombing a public school would obey the law in furnishing his name in connection with any of these organizations?

Mr. Gravatt: I object to this, if Your Honor please.

Judge Soper: I think it is an argumentative question. I do not think it throws any factual light on it. Sustained. Is that all, gentlemen, of this witness?

Mr. Gravatt: Yes, sir.

Call Mr. Coates.

C. T. COATES, called as a witness by the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. You are Sheriff C. T. Coates, Sheriff of Halifax County?

[fol. 448] A. That is right, yes, sir.

Q. Mr. Coates, what is the population of the County of Halifax?

A. The last census, it was 42,000.

Q. What is the proportion of white and Negro in the county?

A. About 50-50.

Q. What had the relations between the white and the Negro people in Halifax County been in the past?

A. Prior to 1954, it was good.

Q. Have you noticed any change during these recent years in the relationship between the people of your county and the two races?

A. I have.

Q. Will you describe what the changes have been?

A. Well, the change has been the cooperation we have enjoyed prior to that has vanished somewhat, and the respect has vanished somewhat.

Q. The what?

A. The respect that they had for each other has vanished somewhat.

Q. How many officers do you have in your charge?

A. I have seven.

Q. You are the chief law enforcement officer in that community, are you not?

[fol. 449] A. Yes, sir.

Q. You are employed, I believe, under the law under certain conditions to deputize citizens to assist you in maintaining the peace?

A. Yes, sir.

Q. In the event the public schools, or some of the public schools, of Halifax County were required to admit Negro children to schools that had theretofore been operated on a segregated basis, what in your opinion would be the effect upon the relationship between the white and the Negro people of your community?

Mr. Robinson: If the Court please, I object to that question. I do not think that it has been shown that this witness is competent to answer that question. What the effect is going to be of school desegregation in the community. I object to it.

Judge Soper: The question goes to the general climate of opinion in this particular neighborhood, does it not?

Mr. Gravatt: It is his business to know, Judge. If he doesn't know, it is a part of his official business to be informed upon matters of that kind, at this particular time, especially.

Mr. Robinson: If the Court please, and without undertaking too strenuously to pursue this objection, there has [fol. 450] been an attempt to qualify this witness as an expert in the field of law enforcement. But the question that is asked is the effect of desegregation upon public attitudes and the public mind. I do not think the witness is qualified to answer that kind of question.

Judge Soper: Not merely because he is an enforcement officer does not do him any harm in that respect, it doesn't qualify him, does it? Really, the question is whether anyone who resides in the community would have such knowledge of public opinion and the possibility of clashes of public opinion to make a statement. It is a matter for the record, it seems to me.

By Mr. Gravatt:

Q. Sheriff Coates, do you feel that you are sufficiently acquainted with the attitudes of the people in your county, white and Negro, to speak with confidence with respect to what might be the result of compulsory integration of schools in the county?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. Will you tell us what in your opinion would such an eventuality have upon the relationship between the white [fol. 451] and the Negro people and upon the preservation of the public peace?

A. Basing my answer on some trouble that we have just had prior to this time, I think the problem of enforced integration up there would probably cause a lot of trouble and probably bloodshed.

Q. Would it be helpful to you if upon the law books of the State of Virginia there were a statute which forbid the organization of clandestine and secret groups of that kind?

Mr. Robinson: I object to that.

Judge Soper: I do not see the purpose of that question. You are asking him to express an opinion as to what the Legislature of Virginia should do. That is the nature of the question.

Mr. Gravatt: No, sir, I asked him if it would be helpful to him. The question was designed to find out whether it would be helpful to him if there was in force in Virginia a statute such as Section 32.

Judge Soper: We are not the Legislature of Virginia. The objection is well taken. You may get what you want in a different way, but I think that question is objectionable.

By Mr. Gravatt:

Q. If all persons who might come into your county at [fol. 452] that time—

Judge Soper: Some time ago, Counsel, in order to bring the matter to a head, you asked some of these other people

and the law enforcement officers whether or not the provisions of the statute which is now on the books, Section 32, particularly, would be helpful.

Mr. Gravatt: All right.

By Mr. Gravatt:

Q. Chapter 32, Sheriff, requires generally that all persons, firms, partnerships, corporations, or associations, whether acting by or through agents, servants, employees, officers, or volunteer workers, a major part of whose activities have to do with promoting the interests of one or the other of any race, be required to register their names and certain other information with respect to officers and so forth in a public place in Virginia. Would such a law be of assistance to you in controlling agitators and persons who might come into your community under the circumstances that I have mentioned a moment ago?

A. It would be most helpful; yes, sir.

Q. If you had such a condition, would it be necessary for you to deputize additional assistants in maintaining the peace?

A. Yes.

[fol. 453] Q. Would it be of importance to you to know whether or not the people of your community were identified with any organization which was engaged in promoting the interests of one race or the other in selecting your deputies?

A. That's right; yes, sir.

Q. Would it be helpful to you if you knew, not only who were the members of the white organization that might be formed, but who were the members of any Negro organizations that might exist?

A. Yes, sir.

Q. Could you undertake to use the good offices of the leaders of all such organizations to assist you in undertaking to maintain the public peace in the community under the conditions that I have mentioned heretofore?

A. Yes, sir.

Mr. Gravatt: I think that is all, sir.

Cross examination.

By Mr. Carter:

Q. In answer to a question from Mr. Gravatt, you, Mr. Coates—the question was, Would these lists be helpful to you in controlling agitators. The first question I want to ask you is, What do you mean by that?

A. Well, I mean if such agitators belonged to such groups have their names available to me, why to cope with any [fol. 454] situation, the agitators would be the ones most likely and if they were taken away the rest of the crowd could be handled.

Q. You say if such agitators belonged to such groups. I assume by that that you found out who the agitators are?

A. I have found out to some extent, yes.

Q. Let's say in your community that a person is an agitator. You describe this person as being an agitator. You know who that person is, or new persons that come into the community.

A. I know who they are on a local level.

Q. If you wouldn't mind listening to the question. I haven't finished. You know the agitators coming into the community. What good is it going to do you to know whether he is connected with an organization, or what organization or what not?

A. Having that information, if I had to deputize extra help, why I certainly wouldn't want to get one that was an agitator or a member of an organization that was agitating.

Q. Assuming that the organization, as far as you know, engages in lawful activities, does nothing unlawful to promote the interests of a white group, colored group, what business is it of the police to know who the members of the [fol. 455] organization are?

A. If the organization doesn't take any part on either side, why it would still be well to know what sort of organization they belong to when you are placed in the position that you have to get additional help. You wouldn't want to get people from organizations who were prejudiced against one another on either side. Until such occasion arises, you wouldn't know probably at the time what organization was the agitating organization.

Q. Don't you conceive it to be your job and your duty if a disturbance occurs to find out who commits that disturbance?

A. That is right.

Q. Without regard to what organization they belong to or not?

A. Well, if a crime is committed, you don't go into what organization they belong to at that time, but what we are trying to do is prevent something from happening.

Q. Let me ask you just one final question. Assuming that a person belongs to an organization and a disturbance is committed, that disturbance being, by your investigation, caused, promoted, by that particular organization; what help does it give you to find out who committed the disturbance and by knowing that the particular individual happened to be associated in the organization?

[fol. 456] A. I don't quite follow your question all the way through.

Q. I want you to follow it. Maybe I'd better repeat. A disturbance occurs in your community, you have made an investigation and you have reason to believe that the disturbance was caused or promoted by an organization. Do you follow me so far?

A. Yes.

Q. You are trying to find out the individuals who caused the disturbance. What help is it to you to know that certain individuals belong to this particular organization that you think had something to do as an organization with promoting the disturbance?

A. The organization promotes the disturbance. Then what good it would do me is to find out who are the heads of those organizations and who is behind it and who agitated it. Now the experience—

Q. But you are trying to find out who is responsible for the individuals, are you not?

A. Yes. The experience I have had with this organizational trouble in which we had some in the town of South Boston about a month ago, we found out that the president of this organization on the local basis and another man that I knew was a member of the organization was on the scene, and that is why I say to have the name of this organization,

[fol. 457] not only from the head but on down to the grass roots to find out what their membership is or who they are, will do a great deal to help us.

Q. But you are interested in finding out who was on the scene and who has personal knowledge of what happened, are you not?

A. That's right. If he is caught, or the organization or the head of the organization knows who they are on the scene.

Q. Know what people are on the scene?

A. The individual that you have been talking about that actually caused the trouble, if they are members of this organization.

Q. How can you assume that they would know who caused the disturbance? Because you happen to belong to an organization and a disturbance is caused, how can you say that you know as head of the organization that some individual caused the disturbance?

A. If the trouble is caused on an organizational basis, the heads of those organizations know who is doing it.

Q. I do not want to pursue it. One other question I do not understand. What do you mean, if it is caused on an organizational basis?

A. You are the one that stated if an organization had [fol. 458] caused some trouble.

Q. Well, I was really pursuing your line of reasoning. I want to know what do you mean by that, caused on an organizational basis. That, I don't understand.

A. The question you asked me if it was caused by an organization, what good it would do me to try to find out who the individuals were from the organization. I tried to explain to you if the disturbance was caused by an organization, then the heads of the organization in that community know who those people were that actually caused the disturbance.

Q. Would you tell me how does an organization cause disturbance of the peace?

A. Well, I can cite a case to you that happened about a month ago. May I say this, if you want me to call names of organizations, I can do that. Maybe I can explain it better.

Q. It is up to you.

A. A colored man in my community came to me, on yesterday, and told me that the NAACP had put pressure on him to try to make him join the NAACP. He refused to join. They instructed him that he had to join and he had to vote like they said to vote, and if there was any bloodshed in that community from integration of the school that the NAACP was going to be in the middle of it. He refused [fol. 459] to join it. The head of this organization, so he said, on account of him refusing to join their organization, had sent a bunch of thugs around to his place to tear it up.

Q. You have investigated that?

A. I haven't yet. I haven't had an opportunity. Now that is why I say that the head of the organization is familiar with who these people are that cause the disturbance on an organizational basis.

Q. If that kind of matter would come to your attention, you would investigate it first or find out who these people were, would you not?

A. I have no way of finding out who those people are unless I go to the head.

Q. No, I mean the thugs, the people who are coming in and tearing up this man's business.

A. Oh, yes.

Q. You are going to make such an investigation?

A. That's right.

Q. At the present time, you have not, all you have is the complaint?

A. Yes, and I had that on yesterday.

[fol. 460] Q. How are you planning to pursue this investigation?

A. Well, I was told—

Judge Soper: It seems to me, Gentlemen, we are going pretty far afield in going into incidents. We have got enough to try here without trying cases the Sheriff may have to handle down in his county.

Mr. Carter: All right, sir.

By Mr. Robinson:

Q. Just a couple of questions, Mr. Coates. I believe you testified that you now have seven deputies working for you?

A. Yes, sir.

Q. Do you have any Negro deputies?

A. No.

Q. Let me ask you this: Do you mean to say that you are going to wait for a disturbance to occur of a kind that you and your seven deputies can't handle before you are even going to start thinking about people whom you would employ as additional deputies?

A. I didn't say that.

Q. Well, don't you have people in mind right now that you would employ if some condition would arise in your community that would necessitate more than the seven [fol. 461] deputies that you have?

A. I do.

Q. Now, you expressed the opinion a little earlier that if there occurred school desegregation in Halifax County, there would be disorder?

A. That's right.

Q. That was the opinion that you expressed?

A. That's right.

Q. And am I to understand that you formulated this opinion after talking to people and getting their views and reactions to this matter of school integration? Is that the way you formulated your opinion?

A. No.

Q. How did you go about formulating your opinion?

A. I formulated my opinion on the trouble we had about a month ago between the two races.

Q. And that is the whole basis on which you base your opinion that if the schools are desegregated there is going to be trouble?

A. That and public opinion, yes, sir.

Q. How did you go about ascertaining the public opinion?

A. Well, the attitude of the people and what they have expressed as their opinion.

Q. You have talked to these people, and did they express [fol. 462] their opinion to you?

A. Part of them, and indirectly.

Q. What do you mean by "indirectly"?

A. It came through other people to me.

Q. You mean you got it secondhand?

A. Some of it.

Q. Did you get any of it directly?

A. That's right.

Q. How many people did you talk to yourself about this matter?

A. I haven't been all around the county—

Q. You have not made any other effort to see just what the sentiment would be in your county?

A. Oh, yes, I have.

Q. What did you do?

A. I have talked to some of the leaders in different sections of the county.

Q. Do you know how many?

A. No.

Q. Could you estimate?

A. I guess so; ten or twelve people in different communities.

Q. These were white people that you talked to?

A. No, not altogether.

Q. How many Negroes did you talk to?
[fol. 463] A. Four or five.

Q. What led you to believe that they could express the opinion of the community leaders on this matter?

A. They were leaders in the community and had heard a good many people in the community express themselves.

Q. How long have you lived in Halifax County?

A. Forty-five years or so.

Q. Oh. You have quite a number of friends in Halifax County?

A. Yes, white and colored.

Q. And you have talked to a great many of these people about the possible effects of school desegregation in Halifax County?

A. Yes, I have.

Q. And your opinion is based partly on that, is it not?

A. That's right.

Q. Do you include Negroes residing in Halifax County among your friends?

A. Yes, sir, I do.

Q. You know Negroes as well as you know Halifax County on a friendly basis?

A. Yes, sir.

Q. You associate with Negroes in Halifax County to the same extent as you do with your white friends?

[fol. 464] A. Professionally, I do.

Q. But not on any other basis except in your character as Sheriff of Halifax County do you associate with Negroes; isn't that a fact?

A. No. I have Negro friends; I speak to them and I associate with them on an every-day basis. They come into my office and go out of my office. They come in sometimes just to pay respects.

Q. Do you associate with them in your home?

A. No.

Q. Or in their homes?

A. No.

Q. Or in your church?

A. No.

Q. Or in your social clubs?

A. No.

Q. Now, Sheriff, isn't it your opinion that the only way you think this order can be prevented in Halifax County is to prevent the desegregation of the schools? Isn't that your opinion?

A. That's right.

Mr. Robinson: That is all.

[fol. 465] HAROLD CLARK TAYLOR, called as a witness on behalf of the defendants, and being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. State your name, please, sir.

A. Harold Clark Taylor.

Q. Where is your home, Mr. Taylor?

A. I live in Isle of Wight County, Virginia.

Q. What public office, if any, do you hold in that county?

A. Sheriff.

Q. How long have you held the office of Sheriff of Isle of Wight?

A. Approximately a year and nine months.

Q. How long have you lived in Isle of Wight County?

A. About seven years.

Q. Are you acquainted with the white and the colored people of the county alike?

A. Yes, sir, I am.

Q. Mr. Taylor, what is the proportion of population of whites and Negroes in that county?

A. There is about 54 percent colored and 46 percent white.

Q. What at the present time are the relations between [fol. 466] the races in your community?

A. Well, there is some feeling between the two races in the community, and there has been tension. There is no tension at the particular time—right much feeling.

Q. How many deputies do you have?

A. I have two full-time deputies and one part-time deputy.

Q. What is the geographical area of your county?

A. It is in Tidewater Virginia, adjoins—

Q. I mean, what is the area in miles, the size of it?

A. 317 square miles, I think.

Q. And you have two deputies?

A. Two full-time deputies.

By Judge Soper:

Q. The population?

A. The population the last census was approximately 15,000.

Q. 15,000?

A. That's right; but it has grown. An Army camp has moved in. I would say maybe 17 or 18,000.

Judge Soper: You are not crowded yet.

By Mr. Gravatt:

Q. Mr. Taylor, have you tried in these recent years to be alert to the conditions influencing the relations between [fol. 467] the white and the colored people in your neighborhood?

A. Yes, sir, I have tried to be alert to them.

Q. Do you know what has been the traditional state of mind of the people in your community with respect to the separation of white and colored children in the schools?

A. Yes, sir.

Q. Do you think you are sufficiently well informed to give a reliable opinion, as the chief law enforcement officer in your county, as to what might be the likelihood of disorder in event a decree were entered requiring the admission of colored children to white schools in your county?

A. Yes, I think I can render an opinion.

Q. Will you state what in your opinion would be the effect of such a development upon the public peace in Isle of Wight County?

A. It is unpredictable just what would happen. There would be more than tension; there would be fighting and there would be bloodshed.

Q. If you had to cope with such a problem, what would you do with respect to getting additional deputies to help you in the preservation of the public peace?

A. Of course, I would have to depute some more help. [fol. 468] Q. You are authorized under the law to depute people, not only on a permanent basis, but in emergency situations also, are you not?

A. Yes, sir.

Q. What would be the effect upon such a situation in your community of outside persons, such as the individual who is, I presume, quite well known to you by his reputation, John Kasper, coming into your community? What would be the effect of that upon your ability to preserve the public peace there?

A. That would affect my ability to preserve the public peace. I would need additional help if he came in there.

Q. If such a person as he, or any other individual who might come in for the purpose of agitating and causing

trouble, were required not only to register his own name but the name of any associates or persons who participated with him, with the State Corporation Commission, would that be of assistance to you in coping with that individual?

A. Yes, it would be of assistance in coping with them and in detecting any crimes that might occur in connection with them.

Q. Would it be of assistance to you in preparing yourself to meet such conditions if you had available to you a list of all persons, not only in your own community but in [fol. 469] other communities, who had occupied positions of leadership in organizations partisan to the interests of either the white or the colored race?

A. Yes, it would be a help to have the list. It would be a help in coping with what would probably happen. Certainly, it would be a help.

Q. In undertaking to select your deputies, would that list be helpful to you?

A. Yes, sir, it would.

Q. Are you further of the opinion that the mere fact that people who might set out upon a course to provoke violence were required as a matter of law to first register their names, that that would be a deterrent in itself to such people coming into your community?

Judge Soper: I think that is going a little far afield.

Mr. Gravatt: All right, sir. I have no further questions.

Cross examination.

By Mr. Robinson:

Q. Sheriff, as I understand, the issue of segregation in public schools has created tension in Isle of Wight County?

A. I said there was no tension at the present time. There [fol. 470] was on school-opening day, and has been, tension.

Q. But it would be your opinion, predicated upon the information that you have expressed your other opinions on, that there would be great tension in the event that efforts were made to desegregate the public schools of Isle of Wight County?

A. I understood the question to be, if a decree was entered to integrate.

Q. Yes. In other words, you feel that if there were some action, by decree or otherwise, that would direct that the schools be integrated, as you put it, that would promote great tension in the community, or Isle of Wight County?

A. Yes, I think it would.

Q. All right. And this resentment, or this tension, would assume the form of opposition and resentment to the matter of desegregating the schools, or integrating the schools? The people would be opposed to that; is that what you are saying?

A. I am saying that there would be violence if the schools were ordered to integrate in Isle of Wight County.

Q. Yes, I understand that, but in addition to this violence, I understood you also to say that there would be [fol. 471] tension and resentment to the idea of removing segregation from the schools of Isle of Wight County?

A. I am afraid I don't understand your question.

Q. Well, do you feel that the people in Isle of Wight County would welcome the idea of desegregating the schools there?

Judge Soper: I think he has answered that. I think he has said that they would not want it.

By Mr. Robinson:

Q. Sheriff, if the schools are desegregated, you say that there will be violence?

A. Yes.

Q. Is there any way that occurs to you that this violence could be prevented without keeping the schools segregated?

A. If you integrate them, there will be violence; if you do not integrate them, there won't be any.

Q. And the only way you think you can prevent violence in Isle of Wight County is to keep the schools segregated as they are now?

A. No, I didn't say that is the only way.

Q. Well, what other way—

A. Or call the National Guard out to prevent violence, or close the schools.

Q. Well, are you going to call the National Guard out [fol. 472] to stop violence?

A. No; you said to prevent violence.

Q. But is there any other way you can prevent violence except to leave the schools as they are now?

A. No, I don't think so.

J. F. CULPEPPER, called as a witness on behalf of the defendants and being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. State your name, residence, and any public office which you hold, please, sir.

A. J. F. Culpepper, Suffolk, Virginia, Sheriff of Nansemond County.

Q. What is the population of Nansemond County, Mr. Culpepper?

A. I imagine about 28,000.

Q. What is the proportion of white and Negro in the population?

A. About 67 to 33; 67 percent colored and 33 white.

Q. What is the geographical area included within the county, if you know, please, sir—the size of the county?

[fol. 473] A. About 430 or -40 square miles.

Q. How many deputy sheriffs do you have?

A. Well, you mean including the jail?

Q. I want everything, yes, sir.

A. Around 11.

Q. Do you have any Negro deputies?

A. Yes, sir.

Q. How many Negro deputies do you have?

A. Three.

Q. What have been the relations between the races, the white and Negro people, in your county in the last several years?

A. Well, I have not noticed too much racial disagreement until recently. I find some recently.

Q. You find that there has been some increase in racial tension in the community in recent months, or this year?

A. Yes, sir, I find some.

Q. You are the chief law enforcement officer in your county?

A. Yes, sir.

Q. Mr. Culpepper, do you think you are sufficiently acquainted with the sentiment and the views of the people in Nansemond County to be able to express a competent [fol. 474] opinion as to what might be the results of an order to integrate the schools of that county?

A. I do.

Q. What, in your opinion, would be the result of such an order in Nansemond County?

A. Well, you would have racial tension.

Q. Do you consider that it would pose an extremely difficult problem for you as the chief law enforcement officer, to maintain the public peace?

A. I do.

Q. What would be the effect upon the local situation if outside persons who might be aggressively interested in behalf of one race or the other, might come into your community, without identifying themselves, and begin to speak and to organize secret organizations?

A. It would be mighty bad if you didn't know anything about it.

Q. Would it be helpful to you, as the chief law enforcement officer of the county, in undertaking to cope with such situations if these people were required to register their names and the names of any organization that they might be a part of in a place that would be available to you?

A. It would be most helpful.

Q. In undertaking to prepare yourself to handle such a [fol. 475] problem, would it be helpful to you in selecting deputies to know whether or not you were getting people who were members of the White Citizens Council or some other racially-prejudiced group of people?

A. It would.

Mr. Gravatt: You may examine.

Cross-examination.

By Mr. Robinson:

Q. As I understand it, Mr. Culpepper, you are of the opinion that if integration were directed at the public schools of Nansemond County, there would be great tension?

A. Yes.

Q. Am I correct in that understanding?

A. Yes.

Q. In other words, what you are saying is that the people of Nansemond County would oppose and resent the idea of integrating the public schools?

A. Yes.

Q. Is that your testimony?

A. Yes.

Q. Is it your further opinion that this would be a great opposition to the matter of integrating the public schools? The opposition and resentment would be indeed great, in your opinion, if that were to happen in your county? [fol. 476] A. I have no doubt that it wouldn't.

Q. Consequently, would not your opinion be that the community would be opposed to and would deeply resent anybody who came to Nansemond County and was permanently engaged in activities to integrate the schools?

A. Ask that question again.

Q. Is it your opinion that this great public opposition and resentment in your county to integrating the schools would extend to anybody who came to Nansemond County and took action to integrate the schools?

A. Some outsider?

Q. Someone who did not live in Nansemond County, we will say.

A. Well, I don't think he would have much influence, no.

Q. All right. Let me ask you this: Suppose that some organization got behind a lawsuit to compel the integration of public schools in Nansemond County; don't you think there would be deep resentment among the citizens of your county toward that organization?

A. I imagine there would.

Mr. Robinson: That is all.

[fol. 477] DR. FRANCIS V. SIMPKINS, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. State your name, your age, your residence, and your occupation, please, sir.

A. My name is Francis V. Simpkins; my age is fifty-seven; my residence is Farmville, Virginia, and I am a Professor in the State College there, called Longwood.

Q. You are a Professor of what, please, sir?

A. History, American History.

Q. Dr. Simpkins, have you made any special study of any particular period of history?

A. I have written six books on various phases of Southern history.

Judge Soper: I can't understand him.

Talk this way.

The Witness: I say, I have written six books on various phases of Southern history.

Judge Soper: History?

The Witness: History, yes.

By Mr. Gravatt:

Q. Will you state what those publications were?

A. Well, one book is a textbook on the history of Virginia, [fol. 478] which has just been published for the public schools under the auspices of the State Textbook Commission. Another one is *The Life of South Carolina Politician, Ben Tilghman*; another one is *The History of the South*, a general textbook for college students; then, I have written a book called *The Women of the Confederacy*. I guess that is enough. I may have forgotten some of them.

Q. Have you made a special study of any particular period of Southern history?

A. This other book, called *South Carolina During Reconstruction*, on the period immediately after the Civil

War, that I made a special study, and I have written an article for the *Encyclopedia of Americana* called *The Ku Klux Klan*.

[fol. 479] Q. Have you made a special study of the historical part played by secret organizations?

A. Yes.

Q. In the period of history, Southern history, following the Civil War?

A. Yes, I have made a special study—

Mr. Carter: Your Honor, we object to this line of inquiry. In the first place, the part after the Civil War, we can see no relation to that and 1957. We also see no relationship in the question about secret organizations. It is a field that has nothing to do with the problem before this Court.

Judge Soper: We will let the examination go on for a step or two more so we can see what the purpose of it is, and then we will try to rule on it.

Mr. Carter: All right, sir.

By Mr. Gravatt:

Q. What, Dr. Simpkins, historically, was the influence of these secret organizations which appeared in the South following the Civil War, and I refer particularly to those that were partisan for either one race or the other?

A. Well, I think the Union or Loyal League—it was an organization that started in 1862 to promote patriotism [fol. 480] in the North, and after the War it spread into the South and became largely an organization made up of what the South called Carpetbaggers and Negroes. That organization was secret and it was responsible for perhaps one of the greatest changes that ever took place in Negro relations. It alienated the Negroes and the white people completely, not socially, but politically, and it was secret and it committed some, not many, but some acts of violence under the cloak of secrecy, this Union League of America.

Q. What other names or what were some of the other secret organizations that appeared in the South at that time?

A. Well, the most important of course, was the Ku Klux Klan. It was notorious for its secrecy and also ultimately became notorious for the crimes it committed, and the cloak of secrecy was one of the reasons why these crimes could be committed effectively. It had a lot to do with the destruction of what was called the radical governments in the various Southern States, not Virginia, in other Southern States.

Q. Based upon your study of history and your knowledge of this particular period of history, what would be the effect of legislation—

Mr. Carter: We object, Your Honor.

[fol. 481] Judge Soper: The question hasn't been finished.

Mr. Carter: All right.

By Mr. Gravatt:

Q. —designed to remove the cloak of secrecy from organizations dedicated to the promotion of the interest of any race.

Judge Soper: Now, Mr. Carter.

Mr. Carter: We object, Your Honor. I would like to renew the objection we made before. We see no relationship of this question or the testimony or the line of questioning to the problem before the Court. It is an entirely different period. Dr. Simpkins is relating his knowledge of the history of an entirely different period than the matter before this Court. There is no question here of a secret, clandestine organization. That is not the problem before this Court. We renew our objection. We think there is no relevancy.

Mr. Gravatt: If Your Honor please, I have simply asked a question based upon history, and I should think that history would be a subject that would be relevant, certainly to the great problem that we have. We have got [fol. 482] witnesses here who have testified to the tension that exists in the state, we have got testimony here of various organizations that are active in Virginia and elsewhere in behalf of one or the other, and I think that it would be quite enlightening to look to the pages of history

to see whether or not we may have made mistakes in the past in failing to undertake to control those organizations and to prevent their secrecy in the fashion that is involved in the statutes.

Judge Soper: We will take the matter under consideration. This is a good time to take a recess, anyhow. We will return at two o'clock.

(A recess was taken for lunch until 2:00 p. m.)

[fol. 483]

Afternoon Session

Met pursuant to noon recess at 2:10 p. m.

STATEMENT BY JUDGE SOPER

Judge Soper: With respect to the question of evidence that was before the Court at the time of adjournment, it is obvious of course that the question is a general one and it is obvious that there could be an extensive investigation into the whole history of the United States; and not only of the United States, but, generically, from the early times if you want to get instances of what happens when there are conflicts among people and among different races of people. This particular question as to what would be the effect of secret societies, that was alluded to in part on behalf of the plaintiffs here because they resent the idea that their organization is a secret organization. There is no evidence, as we see it, to justify that classification. Indeed, the evidence tends to show that their success greatly depends upon the publicity and the frequency with which they preach their doctrines to large masses of people.

On the other hand, it is obvious from a reading of the statute that whatever may have been one of its purposes, it is not confined in its application to the NAACP, that reaches any organization or any person, even a public [fol. 484] man in Virginia who chose to preach either integration or segregation, if it wasn't in a political campaign, would be under the penalty of this statute unless he registered.

So in making this ruling, we do not want it understood that we are in any way holding that this organization should be classified, that is, the plaintiff's organization, as secret. Their objection to registering and to divulging their names is, according to their viewpoint, fear of apprehension of discrimination of one kind or another. We are not disposed, Gentlemen, to in any way curb or restrict you in your examination to things that you think are relevant. We anticipate that you wouldn't expect to go too long because we were assured solidly yesterday that you really wouldn't need this whole day. If we would proceed with this through Claude Bower's Reconstruction History and Rhodes' History of the United States, we would be here at least, I think, until Christmas.

With this admonition, please confine yourselves. We feel, Gentlemen, that if there is any desire to file the Professor's learned treatises or to use them in your brief, do so and quote from them, or any other work, but bear in mind that after all, while we are here temporarily as judges, we have been born and raised in this country and are reasonably familiar with what is going on and what [fol. 485] is going on and what has gone on in the matter of racial conflicts and other public controversies.

Mr. Gravatt: Thank you, Judge.

DR. FRANCIS L. SIMPKINS, the witness on the stand at the noon recess, resumed and further testified as follows:

Direct examination (Continuing).

By Mr. Gravatt:

Q. Dr. Simpkins, you have mentioned the Union League and Klan. Will you simply mention some of the organizations that have sprung up?

A. Secret organizations?

Q. Yes, sir.

A. Well, they involved the Palefaces, the Knights of the White Camellia, the Knights of the Red Rose, the White Shirts, the Red Lion, the Shotgun Boys—those were some of the societies. They all go generally under the name of

the Ku Klux Klan. The Ku Klux Klan is a special organization of them. It is the most important of the organizations, or might be.

Q. Has there been a recurrence periodically, a tendency to recur periodically, of these organizations that you refer to, at later times?

A. Well, certainly there has been for the Ku Klux Klan. [fol. 486] In this article that I wrote for the Encyclopedia, I referred to the three Ku Klux: the one of the Reconstruction Period, the one that came after the First World War, and then the revival of it growing out of these racial tensions that exist today, which you might call the third Ku Klux Klan.

Q. Have statutes tending to require the disclosure of the membership in these organizations contributed to curb the harmful activities of such organizations, historically?

A. Well, I certainly think so. I think that statutes passed by the various Southern Legislatures in recent years has, at times, almost annihilated the Ku Klux Klan, although what you call the Ku Klux Klan spirit still exists. As long as you have racial tensions you will have that.

Mr. Gravatt: That is all.

Mr. Robinson: We have no questions.

Mr. Gravatt: Do you gentlemen excuse Dr. Simpkins?

Mr. Carter: Yes, sir.

Mr. Gravatt: You may go, if you like, or stay as you like, as you choose.

[fol. 487] Mr. Mays: I want to inquire of counsel: This is a logical place for us to pause to put the witnesses back on for cross-examination, if they desire them.

Judge Soper: Yes.

LEONARD R. BLAND, recalled by the plaintiffs, further testified as follows:

Cross examination (Continued).

By Mr. Robinson:

Q. Mr. Bland, this morning you testified concerning a paper that you said that you signed during the spring of

1951 when there were activities in Prince Edward County concerning the public schools there. I hand you this paper and I ask you to examine it and state whether or not this is the paper that you referred to in your testimony this morning.

A. It is my signature, regardless of the paper.

Q. All right, sir. You signed that paper, did you?

A. That's right.

Mr. Robinson: All right. That is all.

Judge Soper: May we see it, if you please?

Mr. Robinson: Yes, sir. Your Honor, I believe we have photostat copies of all of these authorizations. With little notice, I think we could pull them out.

[fol. 488] Judge Hoffman: I take it that this is to be introduced in evidence.

OFFER IN EVIDENCE

Mr. Robinson: If Your Honor please, we would offer it in evidence.

Judge Soper: This is signed, and in the body of the document there are the names of the children. They are the school children?

Mr. Robinson: That is correct, sir.

Judge Soper: And the signature at the bottom is the signature of the parent?

Mr. Robinson: That is correct.

Judge Soper: In this case, the witness is Leonard Bland.

The Witness: Yes, sir.

Judge Soper: Have you finished with the witness?

Mr. Robinson: Yes, we have finished.

Judge Soper: Do you care for further examination?

Mr. Gravatt: No, sir.

Judge Soper: Let it be marked as an exhibit in the case.

(The document was received in evidence as Plaintiffs' Exhibit No. 8.)

[fol. 489]

ALMA R. RANDLE, recalled by the plaintiffs, further testified as follows:

Cross examination (Continued).

By Mr. Robinson:

Q. Mrs. Randle, this morning you testified that sometime during the spring of 1951, at one of the meetings held in Prince Edward County concerning the school situation there, you signed a paper. I hand you this paper and ask you to examine it and state whether or not this is the paper to which you referred when you testified this morning.

A. This is my writing here, but this is not. (indicating).

Judge Soper: We could not hear what the witness said.

The Witness: Part of this on here is, my own signature—

Judge Soper: Is that your signature?

The Witness: Part of it is here, down at the bottom, here.

By Mr. Robinson:

Q. Would you read the words on there that you wrote?

A. I only wrote "Alma Randle."

Q. That is your own handwriting, is it?

A. Yes; and this is one of the kids', I think, Rosetta.

[fol. 490] Q. Do you know in whose handwriting the balance of the handwriting on there is?

A. Yes.

Q. You do know?

A. Yes.

Q. In whose handwriting is the balance of the material?

A. I think it is Rosetta's—one of the kids'.

Q. Would that be Rosetta Randle, one of your children?

A. Yes.

Mr. Robinson: That is all.

Judge Soper: I think, for the convenience of the Court and counsel, it would be well to read one of these things into the record, so that you will have it there, instead of having to look at the exhibit.

OFFER IN EVIDENCE

Mr. Robinson: All right. If Your Honor please, I would offer this into evidence and I will read it in its entirety:

"AUTHORIZATION

TO WHOM IT MAY CONCERN:

"I (we) do hereby authorize Hill, Martin and Robinson, attorneys, of the City of Richmond, Virginia, to act for [fol. 491] and on behalf of me (us) and for and on behalf of my (our) child (children) designated below, to secure for him (her, them) such educational facilities and opportunities as he (she, they) may be entitled under the Constitution and laws of the United States and of the Commonwealth of Virginia, and to represent him (her, them) in all suits, matters and proceedings, or whatever kind or character, pertaining thereto.

"The child (children) here-in-before mentioned is (are) as follows:

Name in Full	Date of Birth	Sex	Grade Attend.	School Attending
Rosetta Elysabeth Randle	Dec. 16, 1930	Female	12 R.	R. R. Motton
Ethel Lucell Randle	Apr. 25, 1933	Female	10 R.	R. R. Motton
Martin Rome Randle	Sept 20, 1936	Son	8 R.	R. R. Motton

"Said child (children) resides (reside) at Route 1, Box 5, Rice, Va, Virginia. Witness my (our) signature (s) this 26 day of April 1951

Mother Alma Randle
feather (sic) Rome Randle
Parent (s) or guardian (s)

(Cross out one)"

Judge Soper: The Stenographer will copy that into the transcript. Let it be filed as an exhibit.

[fol. 492] (The above-copied paper was filed in evidence and marked Plaintiff's Exhibit No. 9.)

Mr. Robinson: I have no further questions of this witness.

Mr. Robinson: Will you call next Mrs. Sarah Elizabeth Hicks.

SARAH ELIZABETH HICKS, recalled by the plaintiffs, further testified as follows:

Cross examination (Continued).

By Mr. Robinson:

Q. Mrs. Hicks, this morning you testified that during the spring of 1951, at one of the meetings called with reference to the school situation in Prince Edward County, you signed a paper?

A. Yes, sir.

Q. I will ask you to examine this paper and state, if you will, whether this is the paper you so signed.

A. I know I signed my name.

Q. Is that your handwriting, there?

A. Yes, sir, that is my signature.

OFFER IN EVIDENCE

Mr. Robinson: If the Court please, we offer this in evidence [fol. 493] and, if the Court would desire it, I would be glad to read the portion of this in longhand, the balance of it being exactly the same as I have just got through reading.

Judge Soper: I think it is not necessary to read it.

Mr. Robinson: All right, sir.

(The last-mentioned paper, marked Plaintiffs' Exhibit No. 10, was received in evidence.)

Mr. Robinson: I have no further questions of this witness.

Mr. Gravatt: No questions.

ROSA BELL DAVIS, recalled by the plaintiffs, further testified as follows:

Cross examination (Continued).

By Mr. Robinson:

Q. Mrs. Davis, you testified this morning that during the spring of 1951, at one of the meetings held with reference to the school situation in Prince Edward County, you signed a paper. I will ask you to examine this paper and state, if [fol. 494] you will, whether this is the paper to which you had reference this morning?

A. Yes, this is it.

Q. Would you speak up so the Court can hear you?

A. I think so.

Q. Is that your signature appearing at the bottom, there?

A. Yes, it is.

OFFER IN EVIDENCE

Mr. Robinson: If the Court please, we offer this in evidence, as well. I have no further questions.

(The last-mentioned paper, marked Plaintiffs' Exhibit No. 11, was received in evidence.)

Mr. Robinson: Mrs. Maude E. Walker.

MAUDE E. WALKER, recalled by the plaintiffs, further testified as follows:

Cross-examination (Continued).

Mr. Robinson: If the Court please, we have photocopies of the four papers that have been introduced in evidence thus far. If, for the convenience of the Court, the Court [fol. 495] would desire them, I would be very glad to hand them up now.

Judge Soper: If they are the same, we do not need them.

Mr. Robinson: All right.

By Mr. Robinson:

Q. Mrs. Walker, this morning you testified that during the spring of 1951 you signed a paper that had connection with the school situation in Prince Edward County. Would you examine this paper and state whether this is the paper that you signed?

A. I don't know whether I seen this or not (indicating). The paper I signed had about two or two lines and a half, and I don't remember seeing all this up here.

Q. Would you look at the words appearing here at the bottom, "Mrs. Maude E. Walker," and will you state whether or not that is your handwriting?

A. It looks like it.

Q. Can you say positively whether or not that is your handwriting?

A. Well, I told you it looks like it.

Q. It looks like your handwriting?

A. Yes.

Judge Soper: What is in the body of the paper that is in handwriting beside the signature?

[fol. 496] Mr. Robinson: Shall I read it, Your Honor, or characterize it?

Judge Soper: Read it to the witness.

Mr. Robinson: The words "John Junius Walker, September 17, 1935, male, 9-B, R. R. Morton. Maude Estelle Walker, February 6, 1937, F-8-B, R. R. Morton, Route 2, Box 81, Farmville, Virginia. 26 April 1951."

Judge Soper: Who are those people? Ask her.

By Mr. Robinson:

Q. Who are John Junius Walker and Maude Estelle Walker?

A. They are my children.

Q. Was John Junius Walker, in fact, born on September 17, 1935?

A. John was born then.

Q. And Maude Estelle Walker was born on February 16, 1937?

A. Yes.

Q. On April 26, 1951, was John Junius Walker attending Grade 9-B at R. R. Morton High School in Farmville?

A. He was at the school; I don't know what grade.

Q. And Maude Estelle Walker was also attending that school on April 26, 1951?

A. Yes.

[fol. 497] Q. On that date, did you reside at Route 2, Box 81, Farmville, Virginia?

A. Yes.

Q. Would you look at the balance of the handwriting on here, Mrs. Walker, aside from your signature, and tell me, if you can, whose handwriting that is?

A. Well, I told you it looks like mine.

Q. It looks like all of the handwriting on there appears to be yours?

A. It looks like it.

Q. Or what is it that does not appear to you to have been on there when you saw it?

A. This paragraph here, (indicating) here.

Q. The material up here?

A. Uh-huh.

Judge Hutcheson: What do you have reference to? The printed part?

OFFER IN EVIDENCE

Mr. Robinson: The mimeographed part, yes, sir. If the Court please, we offer this in evidence.

(The last-mentioned paper, marked Plaintiffs' Exhibit No. 12, was received in evidence.)

[fol. 498] Redirect examination.

By Mr. Gravatt:

Q. Is the paragraph to which you refer the paragraph beginning, "I do hereby authorize" and ending with the words, "Pertaining thereto"?

A. I don't remember seeing that.

Q. You don't remember seeing that?

A. No, I don't.

Q. Can you state affirmatively whether or not that paragraph was on the paper that you signed?

A. Well, all I can tell you, I don't remember seeing that on there.

By Judge Soper:

Q. Can you read it?

A. Yes, I can read it.

Q. Well, read it.

A. "To whom it may concern: I (we) do hereby authorize Hill, Martin and Robinson, attorneys, of the City of Richmond, Virginia, to act for and on behalf of me (us) and for and on behalf of my (our) child (children) designated below, to secure for him (her, them), such educational facilities and opportunities as he (she, they) may be entitled under the Constitution and laws of the United States and of the Commonwealth of Virginia, and to represent him (her, them) in all suits, matters and proceedings, or [fol. 499] whatever kind or character, pertaining thereto.

"The child (children) here-in-before mentioned is (are) as follows:"

Judge Soper: I think she has done very well. I wish the lawyers could read as clearly.

Are there any further questions?

Mr. Robinson: We have no further questions, Your Honor.

We have no further questions of this series of witnesses, if the Court please, and, so far as we are concerned, may the other two witnesses from Charlottesville come back in the courtroom if they desire?

[fol. 500] Mr. Mays: I would like to call Mr. Harrison Mann.

C. HARRISON MANN, JR., called as a witness by the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Mays:

Q. Will you please state your full name, your place of residence, and your occupation?

A. Charles Harrison Mann, Jr.; I am a lawyer and a publisher; my place of residence is Arlington County, Virginia.

Q. Do you hold any kind of political office or position in Virginia, and if so, what?

A. Yes, sir, I am a Member of the House of Delegates.

Q. For how long a period have you been and what district do you represent?

A. I represent the District of Arlington and I have been a Member since 1954.

Q. I call your attention to an Act of the Extra Session of the General Assembly of Virginia passed last July, which is designated as Chapter 32 and which may be further [fol. 501] identified by stating that it relates to the matter of registration of organizations involved in racial activity. Does that identify it enough for you to know what I am speaking of?

A. It does not; so, sir. I am not familiar enough with the chapter numbers as I am the bill numbers.

Q. Would you look or do you have a copy of Chapter 32?

A. Yes, sir.

Q. It is on page 31.

A. Yes, sir, I am familiar with the bill.

Q. Were you a patron of that measure?

A. That is correct. I was chief patron of that measure.

Q. As chief patron, when did it occur to you that the subject matter of this legislation should be enacted into law?

A. During the latter part of the regular session of 1956.

Q. Were there any reasons that prompted you to think that this should be enacted into statute law?

A. Yes, sir.

Q. What were they?

A. About that period of time the so-called Lucy incident down in Alabama was causing a great deal of violence in [fol. 502] that area. At about the same time, Casper was beginning his operations in the entire eastern part of the United States. I felt that it was very probable that in Virginia and elsewhere we were going to be faced with a situation fused with a great deal of racial tension that might ultimately lead to violence and that we in the State

of Virginia should do everything we possibly could to see that that violence did not occur and that tension did not reach the point where it would occur. It was for that reason that I felt it would be highly desirable that all of those elements which would tend to create any racial tension or violence in the State of Virginia should, under law, register and their identities be known so that the proper responsibility could be placed on those people; and that there would be, by reason of the fact that they were known, a deterrent to any inclination on their part to breach public or private rights.

Q. Now, you mentioned one Casper, can you identify him a little more clearly? What was his first name?

A. I think his first name is John Casper.

Q. Does he operate out of any particular city or area, or do you know?

A. At that time, he was operating out of the city of Washington which is right across from my home.

Q. What was the character of his operation, so far as [fol. 503] you know?

A. I think the character of his operations at that time was very largely to line up his chapters of the Seaboard Citizens Councils. Subsequently, of course, we are all familiar with his operations in Clinton and in Nashville and in other places where he has gone down and fomented violence.

Q. As I understand it, it was about the time of the regular session in the early part of '56 that you had these ideas and thought that you should have legislation to meet this situation?

A. That is correct, sir.

Q. Did you attend the extra session of the General Assembly in the fall of that year?

A. Yes, sir.

Q. Had you, in the meantime, done any work on a bill of this character?

A. Yes, sir, I had drafted a bill to be subsequently introduced, either at a special session or at a regular session that might subsequently come.

Q. When you came to the extra session of the General Assembly in the fall of '56, did you introduce a bill of that sort?

A. That is correct, the special session.

Q. Did you find any support to that bill in the General Assembly, so far as other patrons are concerned?

[fol. 504] A. Yes, sir, there was a tremendous amount of support. As a matter of fact, there were quite a number of people who had somewhat similar ideas and a similar plan, I discovered.

Q. Now the bill as it ultimately came out of the General Assembly, was the bill precisely as you had brought it to Richmond or were there changes made in it?

A. No, it was not the same bill that I introduced. The bill was introduced and referred to the Courts of Justice Committee of the House. The Courts of Justice Committee of the House reported out a subsequent measure without any patrons whatever as the bill of the Courts of Justice Committee.

Q. Did you continue to be its chief sponsor?

A. I continued to be its chief manager.

Q. And that was the bill that was ultimately adopted, went through the Senate and was ultimately adopted?

A. Yes, sir, the substitute bill from the Courts of Justice Committee.

Q. Were you the chief patron of any other legislation at that session?

A. Yes, I was the chief patron of a great many bills in that special session.

Q. Were you, to be specific, the chief patron of any of the bills in this series beginning with Chapter 31 and going through Chapter 36 of the Acts of the extra session?

A. I was the chief patron of Chapter 31, Chapter 32, Chapter 33, Chapter 35, and Chapter 36.

Q. Did you have all of those bills in mind when you first came, or did you have some particular ones in mind other than Chapter 32?

A. No, sir. When I came to the special session, I had drafted Chapter 32 and Chapter 35.

Q. Can we identify that?

A. Those were the only two bills which I had planned to introduce.

Q. Shall we identify Chapter 35 as the one dealing with barratry?

A. That is correct.

Q. When did you conceive the idea of that statute?

A. Some time during the months of June and July of 1956.

Q. What did you have in mind?

A. Well, I had in mind the background of what was occurring in the State of Virginia and throughout the United States. There had been reported that the press had discovered that a number of the plaintiffs in the Prince Edward case had indicated that they did not realize that they were bringing a suit in connection with integration, that [fol. 506] they thought that they were merely bringing an action in order to obtain better schools.

In northern Virginia, several lawyers attempted to intervene in the Federal District Court up there on the basis that the NAACP was practicing law. At that time, it may be recalled that the case against the NAACP in Texas was being tried and there it became quite evident that the NAACP was not only soliciting plaintiffs for their cases, but in at least one case was paying a plaintiff to act as such. I felt by reason of what I considered to be a breach of legal ethics and certainly good public policy that the common law offense of barratry—and incidentally I might say that I was also at the same time thinking about the common law offense of maintenance, however I had not drafted a statute—I felt that those Acts would be a highly desirable thing. May I add further to complete my answer?

Q. Please continue.

A. At the same time, it was perfectly evident that not only cases of that nature were being pursued from the standpoint of the NAACP, but in Maryland, in Kentucky, and in other—in Louisiana and in other areas there was a large number of cases also being brought by white people.

Q. Will you state to the Court just how it was that you became patron of the other three bills that you mentioned? [fol. 507] A. Yes, sir. When I got to the special session, I found that a large number of the members of the General Assembly had been giving this subject a great deal of thought. I found, for example, that Senator Fenwick had

drafted a bill on maintenance. I was aware of that fact. I found that other people had bills relating, or proposed bills relating, to registration. I found that at least one other delegate had a bill relating to a General Assembly investigative committee to investigate possible barratry offenses and maintenance offenses. Likewise, there were some other similar bills. I don't recall who had them, but one in particular was to amend the running and capping, or what I prefer to call the ambulance-chasing section of our Virginia Code. I, and several others who were interested in this legislation, got those people who were primarily interested in this legislation together and asked for a conference with the Governor. Now this was after the special session had started. We discussed all the proposed bills and requested the Governor to request the General Assembly that they enact the bills which are under discussion.

Q. That special session of the General Assembly could enact only such legislation as it was called to enact unless it had the unanimous consent of the Members or the request of the Governor; is that correct?

[fol. 508] A. That is correct. At the beginning of the special session, a resolution was passed by both houses limiting the subject matter of the session to matters pertaining to education and only those matters which were agreed to be heard by the General Assembly, by common consent, unanimous consent, or by request of the Governor.

Q. And I take it that you went to the Governor and requested him to request action on these bills?

A. That is correct, sir. It is the simplest way to get the bills before the General Assembly.

Q. Your district comprises what county?

A. Arlington County, sir.

Q. What is the population of that county?

A. I think the census population, sir, is 165,000. I don't know what the Chamber of Commerce census is.

Q. Is the proportion of the colored people there very large?

A. No, sir; I would say about 10 percent.

Q. Have you had any difficulties, so far as the NAACP

was concerned, in that area from any threats of violence at that time?

A. Not from the NAACP, no, sir.

Q. Is it fair to say that your chief concern was John Casper and his activities at that time?

A. Not only fair to say, but that is the situation, sir. As [fol. 509] a matter of fact, I was so concerned about his activities and his close residence in the District of Columbia that I requested of my Commonwealth's Attorney knowledge of ways in which I could proceed in the event that he brought his activities across the river.

Q. Let's identify him a little better, just for the record.

A. John Casper.

Q. Is he a white man?

A. That is correct.

Q. Who is violently fighting integration?

A. That is correct.

Q. Because of your activities, or for any reason, did you during that period, and have you since, been pestered by any large number of anonymous communications by phone or otherwise?

A. Yes, sir.

Judge Soper: This is corroborative evidence, I understand.

Mr. Mays: We want the Court to know that it comes from both sides.

A. (Continuing) I am rather continuously the butt of abuse from all varieties of crackpots, and I think almost anybody in public life that takes a position with respect to any matter is going to receive, from a certain type of [fol. 510] people, all forms of abuse and threats, and so on.

By Mr. Mays:

Q. At any rate, you have been getting it in volume and continue to do so?

A. Most of it has been by telephone, yes, sir.

Mr. Mays: We have no further questions.

Cross examination.

By Mr. Robinson:

Q. Mr. Mann, as I understand your testimony you are chiefly interested in Chapters 31 and 33 because of the activities of John Casper that you feared would extend south of the Potomac into Virginia; is that correct?

A. Not only John Casper, but it was perfectly evident to me that there were many racial organizations springing up throughout the entire country and including the State of Virginia. The Defenders in the State of Virginia, the Ku Klux Klan was springing up in Florida—they had already made their appearance in other states.

Q. Do you mean to say that there had occurred in the State of Virginia when you were formulating your judgment about this legislation incidents of a character that have been attributed to John Casper outside of the State of Virginia?

A. No, that had not.

[fol. 511] Q. So your main concern was Casper and you were afraid of violence resulting from active participation by people like him and that is really why you were interested in getting enacted into the statute law what are now Chapters 31 and 32?

A. No, my main concern was not Casper, my main concern was to avoid in the future situations whereby people of Casper's type and organizations interested in racial matters would possibly cause racial tension or violence.

Q. It didn't take any membership list in Knoxville, Tennessee, or Nashville, Tennessee, to get Casper arrested and jailed for inciting a riot, did it?

A. It certainly did not.

Q. Are you familiar with the fact that he got himself in difficulty in Nashville, Tennessee, for inciting a riot and was jailed on that account?

A. Quite familiar with it.

Q. Are you familiar that he got himself in some kind of difficulty, I don't know whether it was the same thing or not, but some similar kind of difficulty in Knoxville, Tennessee? Isn't that correct?

A. That is correct, with a lot of other people.

Q. And the people down there apparently didn't need any list of members of people who were associated with Casper to take care of that situation, did they?

[fol. 512] A. No, but I am inclined to think that the people who helped him would have been far more restrained had those people been members of a well known organization whose names appeared as a public record.

Q. Are you familiar with the length of time that the National Association for the Advancement of Colored People has operated in Virginia?

A. No, I am not.

Q. If I told you that the National Association for the Advancement of Colored People has operated in Virginia since 1934, would you have any information to the contrary?

A. I would have to rely on your statement.

Q. Has there occurred, to your knowledge, any incident in the State of Virginia since the year 1934 of a character of incidence that you would attribute to John Casper?

A. No, there has not.

Q. Now, Mr. Mann, let's get over to Chapters 33, 35 and 36. What was your motive behind those provisions? Why were you interested in getting them enacted into law?

Judge Soper: What chapters?

Mr. Robinson: Chapters 33, 35, and 36. If the Court please, they are the other three statutes that are involved in this litigation.

A. My motive in getting those enacted into law was to [fol. 513] prevent as a matter of public policy that type of activity which was common knowledge was going on and being participated in by the NAACP in soliciting plaintiffs and, in some instances, even paying a plaintiff to bring a suit, the type of activity which I have previously described in my direct testimony.

By Mr. Robinson:

Q. In formulating that decision, you acted on something that you read in a newspaper about something that you

thought happened in Prince Edward County. That was one of the things that you acted on, wasn't it?

A. That is correct.

Q. What were the other things that motivated you to the decision that you needed some more laws in order to control what you assumed to be going on?

A. The effort that was being made by the attorneys in the northern district of Virginia to intercede in that particular case because the NAACP, a corporation, was practicing law in Virginia.

Q. But I assume that you familiarized yourself with the activities of those attorneys to intervene in that case. You are familiar with what happened in that case?

A. I am familiar that Judge Bryan denied the right to intercede. Why he denied that right, I am not able to say. [fol. 514]

Q. Didn't you take time to find that out?

A. No, I didn't take time to find that out.

Q. What else was it that motivated you to this decision that we needed some laws on this subject?

A. The general activity of the NAACP in other states, particularly the State of Texas, in which it became very apparent that they were engaged in soliciting plaintiffs, paying plaintiffs, operating as free counsel for plaintiffs, and so forth.

Q. Where did you get your information about what was going on in Texas? Where did that come from? Did you go to Texas?

A. From the New York Times, from other newspapers, news magazines, and, as I recall, from the Race Relations Reporter.

Q. What were these stories about? What was the occasion for this information getting in the newspapers that you just made reference to? Was there anything going on in Texas?

A. As I recall it, there was a suit to bar the NAACP from doing business in Texas.

Q. Did that suit come up for trial in the State of Texas? Was it the news stories about this suit in Texas that constituted this body of newspaper information that you acted on?

[fol. 515] A. That is correct; they were matters in the State of Texas.

Q. Are you familiar with the date on which your bills, Chapters 31, 32, 33, 35, and 36, were approved and became law in Virginia? Do you know the date that they took effect? Wasn't it September 28, 1956, to be exact?

A. I was going to say that it was in the latter part of September that those bills became effective.

Q. And the special session wasn't called until about the latter part of August, about the 28th or 29th of August, 1956; isn't that correct?

A. That is correct.

Q. And you said that so far as the materials or the ideas that were codified in Chapters 33, 35, and 36 were concerned, that you didn't even have those in mind until after the special session got underway; isn't that correct?

A. Oh, no, no, I had those in mind—those occurred to me in July and I believe, as a matter of fact, as early as June.

Q. What had happened in June and July that gave you those ideas?

A. The matters which I have recounted; the action in Texas which had not culminated, had not been completed; the action with respect to the Prince Edward case; and the [fol. 516] material that was of interest in that time.

Q. Let me ask you this, Mr. Mann. Do you know when that Texas case that you have been talking about was tried?

A. I don't know when it was tried. It was brought, I believe, in about June or July of 1956.

Q. The story that you read about were the stories of trial of that case. Do you remember when the trial of that case started?

A. No, I don't.

Q. Would you be surprised if I told you some time after September 20, 1956?

A. The trial of the case?

Q. The trial of the Texas case.

A. No, I would not be surprised if you told me the trial of the Texas case.

Q. You mean you took whatever action you did on the basis of the Texas situation after September 20, 1956, and

September 28, 1956, when those bills became law by the signature of the Governor?

A. I am sorry, I didn't get the import of your question.

Q. You testified, Mr. Mann, that one of the things that influenced you to the decision that you made about these three laws was what you read in the newspapers concerning the trial of the Texas action.

[fol. 517] A. That is right.

Q. Which did not occur until September 20, or some time the latter part of September, 1956?

A. That is correct.

Q. Do you still say that what you read in the newspaper about the Texas trial influenced you in your activities concerning statutes that became law as early as September 28, 1956?

A. Yes, it influenced me very considerably because it tended to corroborate all of the background that we had had in the State of Virginia prior to that time.

Q. So you didn't have those in mind before, but they just corroborated an idea that you had formulated on something else before that. Isn't that right?

A. Well, one always gets an idea as to legislation.

By Judge Soper:

Q. The bills were drawn up prior to the Texas legislation?

A. Yes, sir, they were drawn up.

Q. You worked on them yourself?

A. I would say probably in the month of August, sir.

Q. Let me ask you this. Take Chapter 31, for example, the general provision is that a person or an association unless it is registered may not solicit or expend funds for [fol. 518] litigation in which it has no financial interest.

A. Yes, sir.

Q. That was aimed, as I understand it, primarily at the activities with which you were informed of the NAACP in Virginia?

A. Your Honor, that is not quite the case with Chapter 31. Chapter 31 was not the bill that I had—the registration bill that I had originally intended to introduce.

Q. All right, Chapter 32.

A. That was Chapter 32. Chapter 31 was proposed by someone else because they felt, apparently, that anybody who solicited any funds for such purpose whatever—

Q. I understand exactly, but it was a companion bill to 32?

A. Yes, sir.

Q. Which you did father as a patron and which you sponsored because you felt that the activities of the NAACP in Virginia justified it?

A. That is correct, sir.

Q. Under Chapter 31, an association, unless it is registered, may not solicit or expend funds for litigation in which it is financially interested, at least, that is my understanding of it.

[fol. 519] A. Any direct interest, I believe.

Q. Unless he has a pecuniary interest or liability.

A. Unless such a person is a party or unless he has a pecuniary right or liability therein.

Q. That is right.

A. Yes, sir.

Q. If a person or an association does register under that statute, then so far as that statute is concerned he may solicit and expend funds for litigation in which he has no financial interest.

A. Yes, sir.

Q. Is that correct?

A. Yes, sir. I don't think that it is permissive—

Q. I am talking about Chapter 31.

A. Chapter 31, yes, sir. In other words, he may go forward and solicit funds after he registers.

Q. That is, he is forbidden to do it unless he registers.

A. That is correct.

Q. If he does register, he may do it?

A. That is correct, sir.

Q. So that the registration does not in any way interfere with his doing the things which you were trying to prevent.

A. No, sir.

[fol. 520] Q. If you go to Chapter 32, which you were especially helpful in preparing, it is somewhat broader than 31, as I understand it.

A. Yes, sir.

Q. Because without registration it forbids engaging, as one of the principal activities of the Association, in promoting race legislation or advocating integration or segregation or in causing racial conflicts or in raising or expending funds.

A. In racial cases.

Q. For racial litigation.

A. Yes, sir.

Q. Your understanding is that if he registers he may do all of those things?

A. So long as no other law bars him from doing so.

Q. So that the only point of those two things is to secure registration and the registration would have no—it is not quite clear to me what you said that you had in mind as the reason why you wanted the registration of persons engaged in the activities of promoting litigation or legislation of a racial character unless they had a money interest. I am not sure what you said you had in mind you would derive from the registration of such a person.

A. Well, in Chapter 32, sir, which, as you have pointed out, is a broader registration measure than Chapter 31, [fol. 521] the purpose of that registration there encompasses three groups, all of those groups being involved in racial matters. My purpose in that bill was to get the committee to publish record the names of the people who when the organizations engaged in these two activities their names would be a part of the public record so that direct responsibility could be placed on the organizations and the individuals engaging in that for any of the activities that they undertook to do.

Q. Chapter 36 seems to be limited, so far as I can see at the moment and that does not contemplate registration, it is a prohibition.

A. No, sir, that is what—this, as I recall, was primarily Senator Fenwick's measure—

Q. May I interrupt you? It is true, to get this much out that is clear between us, that this statute does not require registration?

A. No, sir.

Q. And the registration wouldn't do you any good.

A. In this statute?

Q. Yes.

A. I am not too sure, sure, that registration wouldn't do a great deal of good in connection—

Q. Where is there any reference to registration in Chapter 36?

A. There is none, sir. But I would like to point out [fol. 522] that under the registration laws where people have to account for their expenditures and have to account for those expenditures under oath that those expenditures accounted for under oath may well disclose a violation of this section.

Q. I don't doubt it. But what I am trying to say is that this section cannot be cured by registration, the act of a—

A. Oh, no, sir. No, sir, I didn't get your point.

[fol. 523] By Judge Soper:

Q. Now, did you draw this section?

A. No, sir.

Q. I remember, a good many years ago, trying a case in Maryland where a fellow had drawn a law against making oleomargarine and then he was a lawyer in the case, and he told the whole courtroom there wasn't any use asking anybody else what the law meant, because he drew it and he knew.

A. Well, sir, I don't find myself in that position.

Q. But do I understand that this prohibits either giving or accepting anything of value as an inducement to commence?

A. Yes, sir.

Q. Is it limited to that phrase?

A. I believe it is, sir, and down here there is a second prohibition, down in Section 1(b).

Q. Do I understand that Section 1(b) makes it unlawful for a person who has no financial interest in or no relationship by blood or marriage with the plaintiff to assist in bringing or maintaining a suit, to advise, counsel, or otherwise instigate the bringing of a suit?

A. Yes, sir, and that is a suit against the Commonwealth or any of its administrative bodies or officers.

[fol. 524] By Judge Hutcheson:

Q. Is that limited by the phrase, "whose professional advice has not been sought in accordance with the Virginia Canon of Ethics"?

A. That is true. That makes it perfectly proper and that was written in to make it perfectly proper.

By Judge Soper:

Q. The purpose of this section was to prevent any assistance given by any such a body as the NAACP to any person who wanted, for example, to bring a suit regarding the acceptance of his children into school?

A. That is correct; the NAACP or any other group that did not have a direct interest in the suit.

Q. We have been talking a lot about registration, and I am not minimizing that phase of the case, but, as I understand it now, this Section 1(b), irrespective of registration, would put the NAACP out of business in Virginia?

A. Well, I wouldn't say, sir, that it would put them out of business. It might put them out of business as a corporation practicing law.

Q. I am not talking about legal technicalities; I am talking about an organization that comes in here, that spends money and helps people to bring suits to assert what they regard as their constitutional rights; and my question is, [fol. 525] whether or not this Section 1(b) would make that unlawful.

A. That aspect of their activities, it would make unlawful.

Judge Soper: Exactly.

By Judge Hoffman:

Q. Mr. Mann, would it not also substantially eliminate all class actions? By that I am not referring to race at all—just forget the racial situation entirely. Assuming that you are employed by the residents of a certain area in Arlington County, let us say, to fight some zoning ordinance in court; unless your advice were directly sought by each and every individual, you could not bring this

action under Chapter 36; am I correct in that conclusion?

A. No, sir, because there are a number of exceptions in this particular chapter and that particular example you gave is one of the exceptions. But, irrespective of whether or not it were an exception, in order to try to answer your question, I would not say, sir, that it would prohibit all forms of class actions, so long as individuals who had a direct interest in the suit wished to retain my services in order to bring that class action, but it would certainly, as I think the statute very clearly sets out, prohibit others and anyone who does not have an interest from offering [fol. 526] funds as an inducement to someone to bring litigation.

Q. Well, I see your exceptions under Section 6 of Chapter 36, but speaking specifically with respect, let us say, to a zoning law, I do not see the exception there. I just happened to hit on that illustration.

A. Well, that is the reason why, sir, I answered your question exclusive of that illustration. That is in the exceptions, I am quite certain.

Q. Suppose that you were called upon to represent a church group in connection with some matter; do you think you could do that under the wording of that statute?

A. Yes, sir; if that church group employed me for the purpose of bringing that action, I see no reason at all why that church group should not employ me, why the church vestry or board of directors should not obtain the funds from their group for the purpose of carrying forward that action.

By Judge Soper:

Q. Could they go further and get funds from some other organization to assist them?

A. Not as an inducement for me to bring that action, no, sir.

Q. Not as an inducement but as an aid. Suppose the church group wanted to bring the action; they did not [fol. 527] have sufficient funds; could they get those funds from some other person and, if they did, would that other person be an offender under this statute?

A. If the request for the funds and for the giving of the funds did serve as an inducement for the church to commence that action, it would be prohibited, sir, in my judgment.

By Judge Hoffman:

Q. Well, if you named your fee and the church did not have sufficient to pay for your services and the church then went on the outside to raise the money for the purpose of bringing the action to pay your fee, that would induce you, I suppose, to bring the suit, if you were sufficiently compensated, would it not?

A. Well, I would have named my fee, sir; how they got the money would be a matter, I think—

Q. Well, would it not be an inducement to you to bring the suit—the extra money that would come from an outside source—and would not that be against the law?

A. No, sir, I don't think so, and I don't think that inducement runs so much in this situation to the attorney as it does to the plaintiff to bring the suit.

Q. All right. Let us look at Chapter 33. That makes it an offense, I believe a misdemeanor—there are some sections in the Virginia Code which have been in effect for [fol. 528] some years and which must be read in connection with these Sections 33 and 35 because they prescribe penalties for violating those sections?

A. Yes, sir.

Q. So, bearing that in mind, is it not true that under 54-78 it would be unlawful for a lawyer in Virginia to accept any financial assistance or fee, or part of a fee, from the NAACP, in a school case?

A. Are you referring to Section 54-78, sir?

Q. Yes, sir.

A. May I read it and refresh my memory as to that section? I am not in the enviable position of the man who wrote the oleomargarine law. I didn't write this one, either.

Q. But you have become an expert in this field and I am asking your assistance.

A. On a very quick reading of this, sir, as I see it, the only thing that it does is provide that one may not be a runner for a corporation or a person or a partnership

in obtaining or solicitation of business for an attorney at law who is serving for that corporation, association, or partnership.

Q. Well, if there is a meeting of colored people who are interested in securing education for their children and it is the sense of the meeting that litigation is necessary, [fol. 529] and the people in this meeting authorize the bringing of such a suit—if they authorize lawyers to bring such a suit, can the lawyer accept compensation from the NAACP?

A. I would think so, sir.

Q. You would think so?

A. Yes, sir. I see no situation here where solicitation of business is involved, either by the lawyer or by the NAACP.

Q. But look at the words that come after the solicitation of business, at the top of page 35. Beginning with the italicized portion that begins on the third line, is there not some indication that any association that acts in connection with any judicial proceeding—that any attorney who acts in connection with a judicial proceeding for a corporation or association which has no pecuniary interest has violated the law by becoming a runner, or is guilty of malpractice?

A. No, sir. My understanding of this section is that there is no reason why he should not serve as long as he or the corporation or the association which he represents does not go out and solicit business, or a representative of that group solicits business. Now, if a representative does solicit business, then this is a direct prohibition against that—

[fol. 530] Q. Solicit business for whom?

A. For themselves.

Q. You mean for the lawyer?

A. For the lawyer, yes, sir; but if the corporation or the association that pays the lawyer—

Q. I don't understand your last statement.

A. Well, if an agent goes out and solicits plaintiffs for the NAACP, which pays the lawyer, then the NAACP, which hires the lawyers, would be in violation of this section of the law because they had a runner who solicited business for them.

Q. Well, if the people in a certain locality are being deprived of proper school facilities and this national organization becomes aware of that fact and goes into that neighborhood in order to try to improve conditions, it would not, in your judgment, be lawful for it to call a meeting to suggest to those people that their rights might be achieved by litigation in court which the association would be willing to finance? That would be a violation of this section?

A. That is correct, sir, in my judgment.

Judge Hutcheson: May I ask a question now, if you gentlemen are through?

Judge Soper: You have been very patient, Judge, as usual.

[fol. 531] By Judge Hutcheson:

Q. You have almost cleared up one point, Mr. Mann, but turn back to Section 36 again, will you, please. Section (a), as I read it, prohibits the giving of a consideration to induce a person to commence or prosecute a suit—I understand it prohibits the giving of a consideration to induce a person to bring a suit. Do you read any prohibition in that section against contributing to a suit already brought?

A. Yes, I do, because the prohibition there is "to commence or to prosecute further any other original proceedings."

Q. I see.

A. I would venture the thought that after a case finished a particular step in the proceedings, this statute would come into effect if the funds were made available to continue the proceedings further.

Q. I see. After it had been instituted?

A. Yes, sir.

Q. If it were an inducement to continue the proceedings?

A. That is correct.

By Judge Soper:

Q. Inducement to whom?

A. Inducement to the plaintiff, sir.

[fol. 532] Q. Not an inducement to the lawyer but to the plaintiff?

A. That is correct.

Q. You read in that connection "inducement" the same as "assistance"?

A. Yes, sir.

By Judge Hutcheson:

Q. Is inducement the same as assistance?

A. I don't think inducement is the same as assistance, unless the assistance induces.

Q. Now, going to Sub-Section (b)—I suppose the "inducement" or "assistance" is a matter of semantics, but going to (b), is there anything in there to prohibit the representation of anyone by counsel provided his advice has been sought in accordance with the usual Canon of Ethics?

A. No, sir, nor actually in the preceding section, because you will note in the preceding section the last clause says: "This section shall not be construed to prohibit the constitutional right of regular employment of any attorney at law," and so on.

By Judge Soper:

Q. Just one other question, to go back to 33 again. Suppose a case of this kind: that a group of colored people, realizing they did not have what they thought they [fol. 533] should have in the way of education for their children, would get together and talk about it and say, "We ought to do something to secure our rights"; it is obvious they might say, "We haven't got the money, but a lot of us have been contributing and a lot of others have been contributing to the NAACP. Let's call on them for help," and they do call on the NAACP for help, and the organization investigates the complaint and finds out there is substance in it and says to this group, "We think your claim is meritorious and we will help you to pay lawyers' expenses," or, "We will pay all of the expenses, court expenses and the lawyers' expenses"; would it be a violation for a lawyer, knowing those facts, to accept the employment?

A. That I would not venture to answer, sir. I do not know whether that would be an inducement or not.

Q. I am not talking about 36 now.

A. I'm sorry.

Q. I am talking about 33.

A. I was going to say, sir, unless it violated some other section—

Q. Well, I'm talking primarily about 33. I should have called that to your attention.

A. I'm afraid, sir, I will have to have the question repeated, because I had my mind centered on the other chapter.

[fol. 534] Q. Simply that a group of colored people who feel that their children are not receiving adequate education get together and counsel together and realizing that there is this Association which has helped people in their situation by litigation or otherwise resolved to call on the NAACP for help, and they do. The NAACP investigates, finds the cause is worthy, and tells them that they will finance it, and they do finance it and the lawyer accepts employment knowing those conditions. Has the lawyer violated Chapter 33?

A. Insofar as the solicitation aspect is concerned—

Q. No, not insofar—just forget insofar. Take what I said.

A. Yes, sir, but you have asked me about three questions in one.

Q. I withdraw it all. I gave you the picture of these people in the association that cannot pay it themselves and they call on the NAACP. The NAACP says, "We will finance you." It does finance them and the lawyer knows that and accepts employment.

A. All right, sir. I would say he would be in violation of Chapter 36, sir.

Q. I am asking you is he in violation of Chapter 33?

A. I would say not, sir.

[fol. 535] Q. What language in 36 would be violated by the supposed case?

A. The promise of services or money as the inducement for them to commence this action.

Judge Soper: Very well. Thank you, sir.

By Judge Hutcheson:

Q. What do you call an inducement? If there is a voluntary request of the organization for assistance originating with the group, not with the organization?

A. I would say, sir, an inducement is something which the case would not have begun unless it were available.

Q. Whether the request originated with the plaintiff or with the organization?

A. I don't think that has anything to do with the Chapter 36 which prohibits the giving of service and money and so forth as an inducement to somebody to commence an action.

Q. You think inducement and assistance are the same, mean the same?

A. Well, certainly assistance would be an inducement, yes.

By Judge Hoffman:

Q. Mr. Mann, under Chapter 32, Section 9, there are certain exemptions from the registration provision, one of which is in connection with anyone associated with [fol. 536] or participating in any manner relative to a political campaign. Does the statute define otherwise when a political campaign begins? I can visualize when it would end, but when does it begin? Or is there another section of the Code perhaps that defines when it begins, which of course would clarify this.

A. There is a section of the pure election laws which indicates that a campaign begins at the time of the filing, final deadline for filing, for campaign.

Q. That would be your construction of that, then?

A. Yes, sir.

By Judge Soper:

Q. I notice also that in Chapter 32 there is the exception of television broadcasting means of communication as well as newspaper. A man can say anything he wants on a television and urge people to bring suits for segre-

gation or integration and he doesn't have to register and he commits no offense; is that true?

A. Yes, sir, that is correct, as long, of course, as he doesn't violate the criminal libel laws. There is no prohibition on any free speech or the right of people to speak or anything else in that section, sir. As a matter of fact, it specifically exempted it. It wasn't in the original bill, sir. It was written in the original bill. It was written in the original bill the provision that "nothing herein [fol. 537] shall apply to the right of the people peaceably to assemble and to petition the government for a redress of grievances," and so forth. This Section 9, with many of its provisions, as I recall, was written directly out of Chapter 10 of the North Carolina Statutes about—I don't know when they were passed, but quite some years ago, relating to the influencing of public opinion. That was not a lobbying statute, that was an influencing opinion statute.

By Judge Hoffman:

Q. But that applies and protects the newspapers, television stations, radio stations, et cetera?

A. Yes, sir.

Q. Does it protect the individual who does the speaking?

A. Yes, sir, I would say that it protects the individual, particularly in view of the proviso at the end of Section 2, the one which I just finished reading that is near the end of the paragraph on page 32, which reads: "and provided, further, that nothing herein shall apply to the right of the people peaceably to assemble and to petition the government for a redress of grievances, or to an individual freely speaking or publishing on his own behalf in the expression of his opinion and engaging in no other activity subject to the provisions hereof and not acting in [fol. 538] concert with other persons."

Judge Soper: Gentlemen, I am afraid that the Court has done too much cross-examination. We do not want to take the place of lawyers or cut them off. None of the lawyers look like they want to ask any questions, so shall we excuse this witness?

Mr. Robinson: If Your Honor please, we have only one other question.

Judge Soper: I will say for the satisfaction and convenience of counsel that when this witness is excused we will take a short recess.

Cross examination (Continued).

By Mr. Robinson:

Q. Mr. Mann, let me ask you this: Suppose a defendant in a capital case who has been convicted and has been sentenced to the death engages an attorney to take an appeal for him. The attorney utilizes the defendant's financial resources as far as he can, but yet does not have a sufficient amount of money to get his printing costs on appeal taken care of. The attorney or the client appeals to the NAACP for assistance, financial assistance, so that he can get enough money to pay for the printing of his record and his briefs in order that the appeal may be considered.

[fol. 539] Mr. Mays: We object, Your Honor. We do not see the relevancy.

Judge Soper: Let him answer.

By Mr. Robinson:

Q. (Continuing) What I want to ask you, Mr. Mann, in a situation of that sort, is there anything about either of these five laws that would prevent that attorney, if he accepted that money, from violating one of these laws?

A. Counsellor, he would not be in violation of any of these laws.

Q. He would not be in violation of Chapter 36?

A. That is right.

Q. And what is about Chapter 36 that would excuse him from violation?

A. In Section 6, you will find, on page 40, this statement and exception: "nor shall this Act apply to suits involving rates or charges or service by common carriers or public utilities, nor shall this Act apply to criminal prosecutions."

Q. Now, Mr. Mann, let me ask you about Chapter 35, the barratry statute. Wouldn't there be a violation through the receipt by the attorney of that money in Chapter 35?

A. No, Counsellor, there would not be, for the same reason.

[fol. 540] Q. Would you feel that the last section of Chapter 35 would not be controlling in that respect and would render the attorney in violation of that chapter if he accepted that money?

A. I think I answered your question when I said that Chapter 35 would not be applicable.

Mr. Robinson: You don't think it would be applicable. Thank you, sir.

Judge Soper: Are there any further questions?

Mr. Mays: That is all.

Judge Soper: Take a recess for a few minutes.

(A short recess was taken, after which the trial was resumed.)

[fol. 541] Mr. Gravatt: Call Mr. B. B. Rowe, please.

B. B. Rowe, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Gravatt:

Q. Will you state your name, age, residence, and occupation, please, sir?

A. B. B. Rowe, forty-six years old, 343 56th Street, and I am General Manager of a savings and loan association in Newport News.

Q. Mr. Rowe, did you discharge any responsibility in connection with the appraisal of real estate for tax purposes in the City of Newport News upon which appraisals the assessments and taxes on real estate are levied?

A. Yes, sir.

Q. What responsibilities did you have in that connection?

A. Well, I was chairman of a board of three assessors.

Q. Appointed by whom?

A. Appointed by the City Council of Newport News.

Q. Are the assessments for tax purposes in Newport News made upon the basis of the appraisal of that committee?

A. Yes, sir.

[fol. 542] Q. Did you make certain investigations at my request in regard to the appraised value of real estate standing in the names of certain people residing in the City of Newport News?

A. Yes, sir.

Q. Do you have a memorandum showing the results of that investigation, sir?

A. Yes, sir, I do.

Q. Did you examine real estate standing in the name of Alexander and Clara Belle Atkins?

A. Yes, sir.

Q. Will you state what real estate they owned and what its appraised value is?

Mr. Robinson: If Your Honor please, I want to object to that question and similar questions—

Judge Soper: Suppose we take it subject to exception.

Mr. Robinson: All right, sir. Am I to understand, if Your Honor please, that our objection and exception would stand with respect to all similar questions asked of this witness?

Judge Soper: Yes, sir.

Is that satisfactory?

Mr. Gravatt: Yes, sir, entirely.

[fol. 543] A. Alexander and Clara Belle Atkins, property located at 3212 Roanoke Avenue, designated as Lots 38 and 39, Block 5-D—do you want that?

By Mr. Gravatt:

Q. Yes, sir, that is exactly what I want, and then I want you to give the appraised value.

A. The appraised value of that property is \$10,675.

Q. Does that value, Mr. Rowe, represent the fair market value of the property as found by your board of appraisers?

A. Yes, sir, it does.

Q. Now, will you read the name of each of the persons owning the real estate and the appraised value of it as disclosed on your report, please, sir?

A. Yes, sir.

Q. So that we will not have to ask you about each one.

A. James W. and Chrystal C. Harris, property located at 613 33rd Street, designated as Lots 43, 44, and 45 in Block 211; the appraised value, \$12,187.50.

Q. All right, sir. Take the next one.

A. All right. Jerry C. Fauntleroy, Jr., 3303 Roanoke Avenue. That is Lot 6 in Block 25-A, \$6,200. He owns another piece in Lakeville, Part Lot 13 and Lot 14 in [fol. 544] Block 51, \$1,437.50.

Ernest C. Downing and Norvalate I. Downing, property located at 551 25th Street, Lot 13 in Block 83, \$9,100. These two pieces are owned by Ernest C. Downing: 1143 29th Street, Lot 15 in Block 5-C, \$4,600, and another piece in his name at 1229 27th Street, Lots 22 and 23 in Block 11-D, \$17,162.50.

Lewis Thompson, 1802 Ivy Avenue, Lot 224 in Block 12, \$7,187.50. Another piece at 21st Street; that is part Lot 25 and 26 in Block 18, \$3,087.50. Another piece, 624 20th Street, Lot 48 in Block 50, \$4,150.

David W. and Daisy L. Morris, property located at 1818 Marshall Avenue, Lots 1 and 2 in Ridley Place, \$16,212.50. They own another piece at 620 25th Street; that is Lots 46 and 47 in Block 67, \$37,350.

Robert L. and Fannie L. Washington, 2505 Parrish Avenue, Lot 6 and one-half of Lot 5 in Block 45-C, \$6,800.

Thomas W. Selden, 27th Street, Lot 45 in Block 105, \$650. Another piece at 3100 Madison Avenue; that is part Lots 33, 34, and 35 and Lot 46 in Block 195, \$20,925.

Percy L. and Patience Drake, 647 21st Street, Lot 14 in Block 14, \$4,112.50.

I have Reverend Alfred C. Littlejohn, property located at 845 25th Street, which is not taxable. That is church [fol. 545] property.

I have Mrs. Katherine R. Jones at 1253 44th Street, and the land book at our office does not indicate that she owns any real estate.

I have William J. and Louise S. Harley, 857 26th Street, Lots 9 and 107, \$5,125.

Cecil B. and Marie E. Patterson, 615-17 Hampton Avenue, part Lots 43 and 44 and Lots 29 and 30 in Block 13, \$35,237.50.

Davis and Mary Bradshaw, 828 31st Street, one-half of Lot 49 and 50 in Block 179, \$6,525.

William and Vivian H. Miller, 753 31st Street, Lots 11 and 12 in Block 195, \$5,687.50.

Douglas C. and Gertrude Hampton, 731 31st Street, Lot 22½ and 23 in Block 195, \$4,750.

Robert and Mary Irene McDonald, 833 31st Street. That is Lot 21 in Block 195, \$6,662.50.

James E. and Emily Manson, 3008 Marshall Avenue, Lots 37 and 38 in Block 179, \$8,762.50. 3215 Roanoke Avenue, Lot 1 in Block 217-A, \$9,012.50. 1023 36th Street—

Q. This is in the name of James E. Manson?

A. This is in the name of James E. Manson. That is Lots 4 and 7 in the Levinson Tract, \$757.

Judge Soper: How much more of this is there? [fol. 546] Mr. Gravatt: There are probably eight or ten more names, Judge—about ten more names.

Judge Soper: Well, it doesn't mean anything to have him read them off, except to get them on the record.

Mr. Gravatt: That is all.

Judge Soper: I suggest that copies be given to counsel on the other side and that it be understood that what this paper shows is what this witness' testimony would be.

Mr. Gravatt: I have done that, sir, during the recess and they asked that I proceed in this fashion.

Judge Soper: Well, I understand, but I am rather inclined to think, maybe, because it is near the end of the day, they have made a bad suggestion.

What is your suggestion about that?

Mr. Robinson: We will concur in the Court's suggestion.

Judge Soper: That will save time, and we don't get any information by having him read it.

Mr. Gravatt: There is a great deal more on here than what he is reading.

[fol. 547] Mr. Hill: I was going to say, there is more on the paper than he is testifying to.

Judge Soper: What you want are the names—

Mr. Gravatt: And the appraised value of the real estate.

Judge Soper: That is what will go in, subject to the exception. The rest of it will not go in.

Mr. Gravatt: May I just hand this to the Reporter with that understanding?

Judge Soper: Yes, sir.

Mr. Gravatt: That is all for this witness, may it please the Court.

(The remainder of the list furnished by the witness to the Reporter was as follows:)

Georgia Coppedge, 857 31st Street, Lots 8, 9, and 10 in Block 197, \$6,425.

James O. and Ida Walton, 852 31st Street, Lot 62 in Block 179, \$6,250.

A. L. and Rosa C. Price, 3012 Marshall Avenue, Lots 39 and 40 in Block 179, \$12,725.

Matdora George, 816 27th Street, Lots 45 and 46 in Block 107, \$6,512.50.

Curley and Nancy Williams, 1138 33rd Street, Lots 53 and 54 in Block 5-D, \$6,712.50.

[fol. 548] Cross examination.

By Mr. Robinson:

Q. The appraised values concerning which you have given testimony, Mr. Rowe, are the fee simple values of the real estate without taking into consideration any mortgages, deeds of trust, or other liens against the property?

A. That is right.

Mr. Robinson: That is all.

Judge Soper: Thank you, sir.

Mr. Gravatt: May this witness be excused?

Mr. Robinson: So far as we are concerned.

Mr. Mays: If Your Honor please, I think we met our pledge of yesterday. I might say, sir, that we have one out-of-state witness coming in who we knew couldn't get here and a second has failed to arrive as yet. I wonder, as a sporting proposition, if Your Honors would permit us to put them both on with the understanding we would conclude in chief within an hour?

Judge Soper: That seems reasonable. Do you have anything in rebuttal?

Mr. Robinson: If the Court please, we do expect to have a small amount of rebuttal.

[fol. 549] Judge Soper: Would you like to use the little time now to do it or would you rather wait over?

Mr. Robinson: We are not prepared, if Your Honor please, to do it at this time. It so happens that we are in the same fix that Mr. Mays is. We don't have the necessary witnesses here either. We will have them here tomorrow morning and I think I can assure the Court that we can get our rebuttal off, with a reasonable amount of cross-examination, within an hour.

Judge Soper: So far as the cross-examination has not been unreasonable in length. I do not want to characterize it otherwise.

Mr. Mays: We appreciate that very much, Your Honor.

Judge Soper: We will adjourn until tomorrow morning at nine thirty.

(Thereupon, an adjournment was taken until tomorrow, September 19, 1957, at 9:30 a. m.)

[fol. 550]

PLAINTIFFS' STATEMENT IN RE PURPOSE FOR WHICH NEWSPAPER ARTICLES (PLAINTIFFS' EXHIBIT 5) ARE OFFERED

The newspaper reports and editorials, marked for identification as Plaintiffs' Exhibit 5.1-5.41 and offered herein (see appendix attached hereto), may be classified into broad categories as follows:

1. Those reporting hostility toward plaintiffs and persons publicly identified with plaintiffs or the aims and objectives with which these organizations are identified (Plaintiffs' Exhibits 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 5.7, 5.8, 5.9, 5.10, 5.11, 5.13, 5.14, 5.15, 5.16, 5.17, 5.22, 5.26, 5.27, 5.32, 5.33.

2. Those reporting public opinion with reference to the specific statutes here involved and indicating a general impression that these laws were designed to suppress plaintiffs' activities (Plaintiffs' Exhibits 5.11, 5.12, 5.18, 5.19, 5.20, 5.21, 5.23, 5.24, 5.25, 5.28, 5.29, 5.30, 5.31, 5.32, 5.34, 5.35, 5.36, 5.37, 5.38, 5.39, 5.40, 5.41).

Plaintiff NAACP alleges that Chapters 31-37, inclusive, are "designated to destroy the plaintiff organization and insulate continued governmental enforced school segregation against court attack by United States citizens of the state." (Complaint, paragraph 7, page 12.)*

Plaintiff NAACP alleges that "to comply (with these [fol. 551] statutes) . . . in view of the present climate of opinion in the state, would expose its members and contributors to harassment, abuse, and economic reprisals by those who disagree with plaintiff's aim and would destroy the plaintiff organization." (Complaint, paragraph 8, pages 13-14.**)

It is also alleged that plaintiff "of necessity relies upon public support and contributions for its continued existence." (Complaint, paragraph 11, page 16.†)

These articles and editorials demonstrate: (1) the public's understanding and opinion concerning the purpose of these statutes here under attack; (2) that there was general public discussion and controversy concerning the plaintiffs and racial issues with which they were identified, which tended to involve in disputes persons publicly identified with the plaintiff organizations, or with the aims and objectives associated therewith, thereby subjecting those persons to criticism, threats or abuse by those opposed to their views; and/or (3) the public opinion and climate in Virginia with reference to plaintiff organizations, their aims and objectives.

Thus, plaintiffs submit that these newspaper reports and editorials are relevant and admissible as some evidence in support of the above-cited allegations of the complaint. See Justice Jackson's concurring opinion in *Sheppard v.*

* Printed herein at page 10.

** Printed herein at pages 11-12.

† Printed herein at page 13.

Florida, 341 U. S. 50, 51; *Davis v. Schnell*, 81 F. Supp. 872 [fol. 552] (S. D. Ala. 1949), aff'd, 336 U. S. 933; *Ludley v. Board of Supervisors*, 150 F. Supp. 900 (E. D. La. 1957).

APPENDIX

SUMMARY OF PLAINTIFFS' EXHIBIT 5

<i>Exhibit No.</i>	<i>Newspaper</i>	<i>Issue and Description</i>
5.1	Norfolk Journal and Guide	Sept. 4, 1954, p. 1, col. 2, con't p. 2, col. 5, "Homes Bombed Again."
5.2		Sept. 25, 1954, p. 1, col. 6, Coronado "Coronado Funster Sends Hearse for NAACP Head."
5.3		June 25, 1955, p. 1, col. 4, "Virginia Welcomes Hate Group," con't p. 2, col. 2.
5.4		August 6, 1955, p. 1, col. 3, "Veteran Gets Note from Klan," con't p. 2, col. 2.
5.5		Sept. 17, 1955, p. 1, col. 2, "Hate Campaign Against NAACP Is Intensified," con't p. 2, col. 5.
5.6		June 2, 1956, p. 1, col. 5, "Burning Cross Doesn't Scare Virginia Minister."
5.7		June 9, 1956, p. 2, col. 1, "Citizens' Council to be Organized in Newport News."
5.8		Aug. 4, 1956, p. 1, col. 7, "Racial Issue Regarded Cause of Cross Burning."
5.9		Aug. 11, 1956, p. 1, col. 7, "Legality of Anti-Labor and NAACP Law Queried."

[fol. 553]

Exhibit

<i>No.</i>	<i>Newspaper</i>	<i>Issue and Description</i>
5.10	Norfolk Journal and Guide	Sept. 1, 1956, p. 2, col. 4, "Cross Burns at Meeting."
5.11		Sept. 8, 1956 (Virginia Edition), p. 1, col. 6, con't p. 2, col. 4, Professional Race Baiters Head Integration Defiance"; p. 1, col. 8, "Mrs. Boyle Not Frightened by Mobsters"; p. 1, col. 1, Editorial "Proposed Assembly Virginia Legislation Aimed at Local Group."
5.12		Sept. 8, 1956 (Home Edition), p. 1, col. 2, "Local Legislators Back Bill to Crush NAACP."
5.13		Sept. 22, 1956, p. 1, col. 1, "Charlottesville Lawmaker, Senator McCue, Speaking," (predicts economic reprisals against Negroes if integration starts).
5.14		Sept. 29, 1956, p. 1, col. 8, "Night-riders Hang Leader in Effigy."
5.15		Oct. 6, 1956, p. 1, col. 3, con't p. 2, col. 1, "Threat Fails to Frighten So. Norfolk NAACP Head."
5.16		Oct. 13, 1956, p. 1, col. 1, "Richmond Chest Bows to Bias, Drops Urban League," (League's support of NAACP given as one of reasons.)
5.17		Apr. 13, 1957, p. 1, col. 5, con't p. 2, col. 5, "Terror Stalks Black Belt."
5.18	Alexandria Gazette	Aug. 30, 1956, p. 1, col. 8, con't p. 2, col. 5, "NAACP Controls Mapped."

[fol. 554]

Exhibit

<i>No.</i>	<i>Newspaper</i>	<i>Issue and Description</i>
5.19	Alexandria Gazette	Sept. 8, 1956, p. 3, col. 1, "Six Measures in Virginia Rap NAACP."
5.20		Sept. 11, 1956, p. 1, col. 8, con't p. 2, col. 5, "Public Hearings End on School Issue." (Proponent of laws here involved says their prior existence would have prevented present desegregation problem.)
5.21		Sept. 22, 1956, p. 1, col. 8, con't p. 2, col. 4, "Assembly Winds Up Meeting After Voting for Stanley Measures." (Legislation has been enacted to investigate such organizations as NAACP, etc.)
5.22	The Lynchburg News	Aug. 19, 1956, p. C-8, col. 3, "Citizen's Council Urges People's School Strike."
5.23		Sept. 21, 1956, p. 1, col. 7, "Assembly Applies Pressure to Wind Up Special Session." (Reports passage by House of "... six bills designed to curb such organizations as NAACP in sponsoring racial litigation or influencing legislation or public opinion on racial matters.")
5.24		Sept. 21, 1956, p. A-2, col. 4, "Senate Committee Okays Cut-Off Bill." (Reference to anti-NAACP Laws.)
5.25		Sept. 22, 1956, p. 1, col. 3, "Thomson Bill Is Approved by Senate." (So-called "NAACP Bill"—Package attacked by Sen. Haddock of Richmond as being aimed at the NAACP.)

[fol. 555]

Exhibit

No. Newspaper
5.26 The Virginian-
Pilot

Issue and Description

July 24, 1956, p. 1, col. 8, "Six Whites Ask Integration in Arlington." (2 later seek permission to withdraw because of "foul and nasty" telephone calls.)

5.27

Aug. 7, 1956, p. 1, col. 6, con't p. 8, col. 2, "Anti-NAACP Laws Passed in Halifax."

5.28

Aug. 28, 1956, p. 1, col. 8, "NAACP Curb Sought by Legislators." (Gov. Stanley requested to submit legislation which would place strict controls on NAACP in Virginia. Bills would require NAACP to file lists of members.)

5.29

Sept. 5, 1956, p. 2, col. 4, "Bill Offered to Curb Racial Unrest Activity."

5.30

Sept. 19, 1956, p. 1, col. 5, "NAACP Bill Reported Out by Committee."

5.31

Sept. 21, 1956, p. 1, col. 6, con't p. 10, col. 3, "Anti-NAACP Package is Passed by House."

5.32

Sept. 22, 1956, p. 1, col. 5, con't p. 9, col. 6, "New Laws Aimed at NAACP Enacted Provide for Investigation Committee"; Editorial page, col. 2, "Unworthy of Virginia Tradition." (Anti-NAACP laws criticized.)

5.33

Sept. 30, 1956, Sec. B, p. 1, col. 4, "Southside Negro Tells of Threat."

Exhibit

No. Newspaper
5.34 Richmond
Times-
Dispatch

Issue and Description

Aug. 26, 1956, p. 1, col. 8, "One Hundred Bills Await Assembly." (Fenwick to join Mann in sponsoring legislation aimed at NAACP.) p. 1, col. 8, con't p. 10, col. 5, "Byrd Bids State Fight Integration."

[fol. 556]

5.35

Sept. 5, 1956, p. 1, col. 6, con't p. 9, col. 1, "Stanley Aides Put Teeth in Fund Bill." (Reference to introduction of "six bills aimed at NAACP.")

5.36

Sept. 6, 1956, p. 1, col. 6, con't p. 8, col. 8, "Six Bills Aimed at Racial Group."

5.37

Sept. 11, 1956, p. 1, col. 7, con't p. 9, col. 1, "Six Measures to Restrict Racial Groups Argued."

5.38

Sept. 18, 1956, p. 2, col. 8, "NAACP Bills Face Action Here Today."

5.39

Sept. 20, 1956, p. 2, col. 1, "Committee Approves Bill to Establish Unit to Probe Racial Groups."

5.40

Sept. 21, 1956, p. 1, col. 7, con't p. 2, col. 1, "Senate Unit Votes Racial Group Bill." Editorial Page, p. 14, col. 1, "Highly Dubious NAACP Bills Need Much More Analysis."

5.41

Sept. 22, 1956, p. 1, col. 7, con't p. 3, col. 1, "Senate Votes for Group to Probe Racial Violations." p. 1, col. 5, con't p. 2, col. 1, "Anti-Integration Course Is Chartered by Assembly." Editorial page 10, col. 1, "NAACP Bills Still Bad."

[fol. 557]

September 19, 1957.

The court reconvened at 9:30 a. m.

Appearances: As previously noted.

Mr. Wickham: Call Mr. Sherman.

JULIAN A. SHERMAN, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Wickham:

Q. Will you please state to the Court your name, address, and occupation?

A. Julian A. Sherman, Horseheads, New York; I am the Eastern Representative of the Claims Research Bureau and it is a bureau of the Law Department of the Association of American Railroads.

Q. Will you outline generally the scope of your duties with the Association?

A. Under the direction of our National Director in Chicago, I supervise the research program in fifteen or twenty eastern states, including Virginia, which deals with the problems that arise from personal injury claims against railroads; I personally participate in investigations of [fol. 558] claims; and I supervise the work of four investigators—

Judge Soper: Talk to the Court, please.

A. (Continuing) —who do most of the actual field investigations, and we do not participate in the adjustment of claims; that is the responsibility of the individual railroads. We make our findings known to the interested officials in the railroad industry and when we discover violations of the law or of the legal Canons of Ethics we report our findings to the appropriate Commonwealth's Attorney or Bar Association officials.

Q. Are you familiar with Chapters 31, 33, 35, and 36 of the Acts of the General Assembly of Virginia, Extra Session 1956?

A. Yes, sir.

Q. Will you briefly discuss your familiarity with barratry, solicitation, and running and capping?

A. The solicitation of personal injury claims, and particularly those under the Federal Employers' Liability Act, against railroads is very widespread. We have found a great deal of evidence in the entire fifteen-state area where we are working. The division of fees by attorneys with laymen and the offering of other financial inducements to them to solicit business is widespread. Barratry, commonly called "running and capping," is indulged in by unethical attorneys and by a lot of laymen in their employ. [fol. 559] In contacting prospective claimants, these runners do their best to undermine the reputation of the railroads' claim department representatives and they also indulge in criticism of ethical local attorneys so as to discourage the claimants from employing them. They criticize the medical services offered by the railroads, and allege that if the claimant will employ the attorney that they are recommending, superior medical services will be provided. It is a commonplace practice for the runners to offer maintenance, including everything from bearing the cost of litigation on down to monthly living cost payments during the pendency of these cases if the recommended lawyer will be employed.

Q. Do the activities to which you refer exist in Virginia?

A. Yes. Our recent investigations have shown us that in at least seventeen cases, well authenticated with signed statements from the claimants, or past claimants, solicitation has occurred throughout Virginia.

Q. Would the information required by Chapter 31 assist in the investigation of the activities to which you have reference?

A. Yes, sir.

Mr. Wickham: That is all.

Mr. Robinson: If Your Honors please, this is rather [fol. 560] basic new testimony. We move to strike it on the basis that it has no relevancy to the issues before the Court.

Judge Soper: You may argue that in your brief if you want to. I think we will take it subject to exceptions.

Mr. Robinson: We have no questions.

By Judge Hoffman:

Q. Mr. Sherman, with respect to your last answer, I would like to know in what degree the newly-enacted laws will materially assist you in bringing about a cessation of the common practice known as "ambulance chasing," as against the present laws and Canon of Ethics that may exist in Virginia and through the Canons of Ethics of the profession at large throughout the country, if you could amplify that somewhat.

A. I think I should begin by informing the Court that I am not an attorney, nor am I familiar with all of the statutes in Virginia that may have some bearing on this subject. However, I think that Chapter 31, in particular, of the statutes that are now being inquired into would be very helpful to us in that it requires the disclosure of financial dealings, which would serve to provide a proof of the division of fees and of maintenance, which would, I think, enable more effective prosecution under other laws and [fol. 561] under the Canons of Ethics.

Judge Soper: All right.

JOHN PATTERSON, called as a witness on behalf of the defendants, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hicks:

Q. Mr. Patterson, will you state your name, address, and occupation, please, sir?

A. John Patterson, Attorney General of Alabama, Montgomery, Alabama.

Q. General Patterson, how long have you been Attorney General of Alabama?

A. Since January 18, 1955.

Q. General, are you personally familiar with certain racial disturbances and disorders which have occurred in the State of Alabama during your term of office?

A. Yes, sir.

Q. Would you describe some of these disturbances, giving a brief background of the cause, names of groups or associations participating, and places and dates?

Mr. Robinson: If Your Honor please, we object to testimony of that kind unless it is in some way going to be [fol. 562] connected with the issues before the Court. I fail to see how disturbances in Alabama are going to have anything to do with the Virginia statutes which are involved here.

Mr. Hicks: Your Honor, we intend to show by this witness, who is chief legal officer of a sister state where there have been racial disturbances, as to how some of these disturbances come about and how, in his opinion, statutes, especially such as Chapter 32, could have helped to prevent or alleviate some of those disturbances. It is for that purpose that this testimony is offered. We feel he has had more experience and more knowledge than anyone else in the country.

Judge Soper: First, Mr. Attorney General, we do not want to cut off any information that will be of value to you or to the Court, but it must be right obvious that this line of testimony would be never-ending. You might go from Alabama to Arkansas and to all the other places where disturbances have occurred, if we are correctly informed by the newspapers. Bearing in mind that we think this matter ought to be handled conservatively—

[fol. 563] Mr. Hicks: Your Honor, as we told you yesterday, we thought this witness would take approximately thirty minutes on direct, and would be just a brief resume of his feeling as to how a registration statute could have helped.

Judge Soper: I think there should be some limit as to the details of the occurrences in other states, which are offered only for purposes of illustration. Certainly, they have no direct pertinency to the situation in Virginia. The Attorney General is an experienced man in court and I think he will know how to curb his testimony, as well as you will know how to curb your questions. We will take it.

By Mr. Hicks:

Q. General Patterson, would you discuss a few of the major disturbances to which you refer in the State of Alabama?

A. Our trouble in Alabama, I think, began around February 6, 1956, in the Autherine Lucy incident at the University of Alabama, which is well known to the plaintiffs in this case, and, as the Court knows, the federal court ordered Autherine Lucy, a Negro student, to be enrolled [fol. 564] at the University of Alabama, and shortly after she arrived, there was a riot of about 30,000 people, of stone-throwing, and disorders of that nature. The local police had to intervene and take certain measures to maintain law and order and the student, Autherine Lucy, had to be withdrawn from the school for her own safety.

In this melee or riot at the University a good many outsiders were involved, stirring up the trouble, who were not students. It is a well known fact, due to this outside influence by people who were not students stirring up the disorder there, it made it very difficult for the law enforcement agencies to maintain order at the University.

Going on from that incident to another, shortly thereafter, Nat King Cole, the Negro singer, was singing in Birmingham, Alabama and was pulled from the stage and assaulted by several white men. Now, we have some information and some evidence which would indicate that these individuals who assaulted this man belonged to a splinter organization of the Ku Klux Klan. These men that did this were tried and convicted for it.

Subsequent to that, we had a series of disturbances in Montgomery, Alabama, arising out of the so-called "Montgomery bus boycott situation," in which dynamite was thrown at some churches and buses were fired on at night [fol. 565] with pistols and rifles, and, as a result of these incidents and as a result of some very fine police work on the part of the City Police of Montgomery, several men were arrested for these dynamiting incidents and I think in one or two cases confessions were obtained, and there is strong evidence that these individuals involved in those Montgomery instances were members of a splinter group of the Klan.

Now, recently, we have had a number of outbreaks which I think possibly can be attributed to stepped-up activity due to the fall term of school beginning in Alabama.

On the 9th of August, '57, about 35 carloads of men, dressed in white robes and hoods, came into the Town of Maplesville, Alabama, which is in a rural area, a town of about 7 or 800 people, and proceeded to parade, and five or six Negroes were whipped by men wearing robes and hoods. During this incident no one identified anybody, no one obtained a license number of an automobile. In Alabama each county has a prefix to its tag and if you get the prefix of the tag you can tell what county the automobile is from, but you cannot identify the car unless you get the rest of the number. The people there, of course, identified a number of prefixes to the tags and the tags came from three surrounding counties. We sent men in from the Attorney [fol. 566] General's office and also from the Department of Public Safety to work with the local authorities, and we have not yet been able to uncover one bit of evidence as to who did that.

Now, I think that if we had such a registration law, which would require the registration of—

[fol. 567] Q. Let me interrupt you there, General. Are you familiar with Chapter 32 of the Acts of the Special Assembly of 1956?

A. Yes, I am.

Q. When you refer to the registration statute, are you referring to that statute or some other?

A. I am referring to the Virginia Statute, Chapter 32. If we had such a statute in Alabama—we don't have, I wish we did but if we had one, that would require the registration of such organizations as the Klan or other type of organizations, then we would at least have a place to start in trying to find out who was committing these acts and incidents. Certainly if we know the three counties the cars came from and we had organizations registered in those counties, we would at least have a place to start. We can't anticipate where these things are going to happen.

On the 29th of August, 1957, we had an incident at Marion, Alabama, in which white men robed with hoods came to a Negro's house and tried to get to come outside

and he ran out the back and he shot into the crowd with a shotgun and we believe that one of the men was hit in the arm. A man shows up later that night at the local hospital for treatment with a very bad shotgun wound in the arm. Of course, he would not talk. The only evidence to indicate—that is, evidence that you could go to court with to indicate [fol. 568] cate that he was in the group at the Negro's house is the fact that someone was shot out there that night and then he shows up with a wound on the same night.

Again, I point out if we had such a registration law it would be very helpful to the law enforcement agencies. In the Marion case here we would have some place to start. Certainly we might be able to tie this man in with a Klan organization.

We had a situation in Alabama in Tuskegee where the Tuskegee Civic Association, a Negro organization which is sort of carrying on the activities that the NAACP used to carry on there before they were enjoined. This organization has been conducting now since the 25th of June of this year a boycott of the white merchants of the city. We have strong evidence that the members of this organization, in addition to persuading people not to trade at certain places, have been going out and actually intimidating and threatening and coercing people to prevent them from trading with the white merchants of that city. We went in there to try to enforce the Alabama Anti-boycott Statute against this organization; they refused to cooperate with us. In questioning the officers of the organization they refused to even give their names. They refused to disclose their records to us, and we had to dig out this thing the hard way and it was very difficult to enforce the Alabama criminal laws in this case because we didn't know who the organization was and what they were doing. Such a registration law as Chapter 32 of the Virginia Statutes of 1956 would certainly be helpful to the State in cases of that sort in aiding us to enforce the criminal laws.

Coming on down, just this month we had a Negro minister by the name of Shuttlesworth in Birmingham who came down to the local high school and brought his daughter to enroll her. He was met by a large group of white men, not students, but grown men, who beat him up there in

front of the high school. Several men have been arrested there and their cases are now pending. I again point out, if we could identify these men who are hanging around places like the schools and could tie them in with organizations that are involved in race relations of one sort or another, it would certainly aid us in finding out what is going on before the trouble happens and assist us in taking some sort of preventive measures to prevent these incidents from happening before they do.

We also had a case recently where several white men seized a Negro. They were dressed in white robes and hoods and they castrated him. A very bad thing. These men are now under arrest and confined in jail in Birmingham awaiting trial. This group of men—

By Judge Soper:

[fol. 570] Q. Are you suggesting that these gentlemen might have registered before they committed this attempt?

A. The situation that we are faced with, Your Honor, where the whole State is just seething with racial discord and strife, we must do—

Judge Soper: Go on with the next incident.

A. These people that were involved in that case—that were involved in that castration case belonged to a splinter organization which is some sort of a Klan organization. Of course, they are not incorporated, they are just a group of irresponsible individuals who got together and called themselves by some fancy name.

That is the general picture of the type of trouble that we are having. The local authorities have been able to handle it so far in Alabama with assists from the Attorney General's office and the State investigators to assist them in running down leads and things. So far, we haven't had anything of such a nature that the local authorities couldn't handle it. But I hasten to point out that if we had such a registration law which would require the registration of all organizations dealing in this type of thing, which is calculated and which we can expect to cause racial trouble, then it would help the authorities to enforce the law, catch the

offenders, and possibly help us to identify organizations [fol. 571] that are working in certain areas so that we could take preventative measures to prevent the things from happening before they do.

Judge Soper: I think we get your position. What is the next question?

By Mr. Hicks:

Q. General Patterson, just one or two other questions. One thing you mentioned about a couple of times was the splinter groups of the Klan. Do you feel a registration statute of organizations might help as control of such groups as that?

Judge Soper: He has already answered that.

A. I would like to add one thing there to that, which I think, if I may. If you had an organization registered and then you observed a breaking up of the organization, it might indicate something going to happen. If the organization tends to break up, you might be able to follow the splinters down and get the more radical elements of it. That has been my experience with them.

Mr. Hicks: I have no further questions.

Cross examination.

By Mr. Robinson:

Q. General Patterson, just a few questions. Didn't you make a statement just before you left Alabama to come here to attend this trial that you were glad to lend a hand [fol. 572] in the fight against the NAACP? Did you make such a statement?

A. Yes, I did.

Q. Isn't it also true, General, that you filed a suit in Alabama against the NAACP and in that suit you demanded that the NAACP produce its membership lists? Isn't that also a fact?

A. That is right.

Q. Have you filed such a suit against the Klan in Alabama?

A. No, I haven't.

Q. General, are you familiar with the fact that during the year 1951, in consequence of a decree of a Federal Court, a Negro student was admitted to the University of Virginia? Do you know about that?

Judge Hoffman: University of Virginia?

Mr. Robinson: University of Virginia.

A. I was in Europe in the Army in 1951 and I am not familiar with that case.

By Mr. Robinson:

Q. You do not know anything about that or of the fact that he was admitted without incident and Negroes are attending that institution without incident? You don't know anything about those circumstances up here, do you?

A. Well, I am aware of the fact that Negro students [fol. 573] go to the higher institutions in this State.

Q. Have you ever heard of any trouble attendant upon their attendance at institutions of higher learning in Virginia?

A. I believe I have.

Q. All right. What did you hear?

A. Well, of course I don't recall any specific instance, but I believe I have heard people comment on the fact that the integration in Virginia hasn't been without incident.

Q. At the higher levels of education?

Judge Soper: I think it is useless to get this gentleman to tell what he thinks he heard. It is not adding anything to our information.

By Mr. Robinson:

Q. General, are you aware of the fact that in Richmond and other areas of the State Negroes are now permitted to travel on intrastate buses without being segregated? Are you aware of that?

A. Well, I haven't been on the buses in Richmond, I don't know. I know what the situation is in Alabama in regard to buses.

Q. Do you know anything about the Virginia situation at all in the field of racial desegregation since the year 1950?

[fol. 574] A. Yes, I am familiar with the cases concerning the schools. I am familiar with the cases now going on in Virginia concerning the schools.

Q. You mean just the case law? That is all you know about it, isn't that so?

A. And what I read.

Mr. Robinson: That is all.

Mr. Mays: If Your Honors please, that is our case except to remind you that we did reserve in the pretrial conference the right to call rebuttal testimony in the event certain evidence was offered as to economic reprisals. I am very hopeful that before the day is over we can reach stipulations on that so we will not have to ask for witnesses to come back. But I do call that to your attention. Subject to that, we rest.

[fol. 575]

REBUTTAL

Mr. Robinson: Call Mr. Otis Scott. If Your Honor please, this was a witness who was brought here to testify today, has not been previously in attendance on this trial. There was also another witness brought here for the same purpose. Without our knowledge, they have been seated in the courtroom during the proceedings this morning.

Judge Soper: Well, I guess it doesn't do the defendants any harm for them to have heard their testimony. However, if there are any other witnesses whom you desire to call, I think that in accordance with the rule they should be asked to wait outside. That was our suggestion at the beginning.

Mr. Robinson: I will ask Mrs. Neal and also Mr. Martin if he is in the courtroom to step outside.

Otis Scott, called as a witness by the plaintiffs, and being first duly sworn, testified in rebuttal as follows:

Direct examination.

By Mr. Robinson:

Q. Will you state your name?

A. Otis Scott.

[fol. 576] Q. Can you speak up, Mr. Scott?

A. Otis Scott.

Q. Where do you live, Mr. Scott?

A. My address is Pamplin, Virginia. I live near Pros-
pect. My address is Pamplin, Virginia.

Q. In what county is your place of residence?

A. Prince Edward County.

Q. Did you have any connection with the suit that was filed in 1951 involving the public schools of Prince Edward County?

A. I did.

Q. What was your connection with that suit?

A. Well, I had children attending the R. R. Morton School.

Q. Would you name those children?

A. It was John Scott and Walter Scott.

Q. Go right ahead, Mr. Scott.

A. And Calvin Scott. Those are the three that are attending at that time.

Q. Are you familiar with a student strike that occurred at the R. R. Morton High School?

A. I am.

Q. Do you know whether or not your children participated in that strike?

A. They did.

[fol. 577] Q. What in consequence of the developments in Prince Edward County did you do in connection with the school situation?

Mr. Mays: Your Honors, I do not want to interrupt needlessly, but as far as I can see this is not rebuttal testimony. It seems to me to be evidence in chief. I object.

Mr. Robinson: If the Court please, I would like to state for the information of the Court and opposing counsel that

the testimony of this witness is being introduced in rebuttal to the other evidence that was offered on yesterday morning by the defendants as to how counsel got to be engaged in this situation and what counsel were authorized to do, and that type of thing. The questions that I have been asking this witness were simply to lay the foundation for questioning in that regard.

Judge Soper: There were certain witnesses for the defendants who testified yesterday, the ones who signed the paper and said they didn't know what they signed, that they didn't know that their lawyers were to bring suit for purposes of integration.

[fol. 578] By Mr. Robinson:

Q. (Continuing) Mr. Scott, removing some of the detail, let me ask you this: Did you attend any meetings that were held in Farmville during the time that the children were out on strike? Did you attend any such meetings?

A. I did.

Q. Do you recall just what meetings you did attend?

A. I remember attending a meeting one night, I don't know what night it was.

Q. Do you remember where the meeting was held?

A. The meeting was at the First Baptist Church.

Q. Do you remember whether anything was said at this meeting about what was going to be done about the school situation?

A. I remember that we as patrons wanted the advice of a lawyer.

Q. Did you seek the advice of attorneys?

A. We did.

Q. Go right ahead, Mr. Scott.

A. We sought the advice of attorneys on the schools.

Q. Did the attorneys give you advice concerning the school situation?

A. They did.

Q. Do you remember what that advice was?

[fol. 579] A. Their advice was they wouldn't take the case up for segregated schools. If they taken the case at all it would be on a non-segregated basis.

Q. Did you execute a paper authorizing attorneys to take action in behalf of your school children?

A. I did.

Q. Did you understand the purpose of the activity in Prince Edward County to be what you have just stated here?

A. I did.

Q. Did you ever change your mind with respect to what you wanted for your children?

A. I have not.

Q. Have you had an occasion to talk to the attorneys handling that situation since the meetings that were held during the week of the school strike?

A. I have.

Q. Will you state whether or not from time to time you have received communications from these attorneys requesting that you participate in conferences with them about the case?

A. Well, I can't recall the dates, but I have had that kind of communication from them.

Mr. Robinson: I think that is all.

Mr. Mays: No questions.

[fol. 580] Mr. Robinson: I would first like to have Mrs. Viola Neal.

VIOLA NEAL, called as a witness by the plaintiffs, being first duly sworn, testified in rebuttal as follows:

Direct examination.

By Mr. Robinson:

Q. Will you state your name?

A. Mrs. Viola Neal.

Q. Where do you reside, Mrs. Neal?

A. Green Bay, Virginia.

Q. In what county is Green Bay?

A. Prince Edward.

Q. Were you a plaintiff in the suit—

A. I was.

Q. Just a minute. —in the suit that was brought affecting the schools of Prince Edward County?

A. That's right.

Q. Did you have any children attending the R. R. Morton High School during the year 1951?

A. Yes, I did.

Q. Will you give us the names of those children?

A. Lee Emmett Neal and Katherine Grace Neal.

Q. Will you state whether or not you had occasion [fol. 581] to seek legal advice and assistance in connection with that school situation?

A. Pardon me?

Q. Did you have an occasion to seek or ask for legal advice or representation in connection with that school situation?

A. That's right.

Q. Did you have an occasion to sign any paper of any sort authorizing attorneys to take action in your behalf?

A. Yes, I did.

Q. Will you state for the information of the Court what you understood these attorneys were supposed to do for your children and yourself?

A. I understood that they were supposed to seek this in the best of their knowledge for the welfare of my children.

Q. Did you have an occasion to attend any meetings of a public character held during the time the students were out on strike from the Morton School?

A. Yes.

Q. Was there any discussion at this meeting as to what the activities engaged in by the attorneys would be? Was there anything said about what the attorneys proposed to do about this situation?

[fol. 582] A. Why, yes.

Q. Will you state for our information just what you recall in that connection?

A. They was supposed to represent us in the best of their knowledge.

Q. Was anything said about actively seeking an end to race segregation in Prince Edward County?

A. That's right.

Q. Did you have any misunderstanding on that score yourself?

A. No, I didn't.

Q. Do you recall where the meetings to which you referred occurred?

A. Well, some of them were held in the basement of the First Baptist Church and in the Methodist Church, I believe.

Q. Any other place that you can remember?

A. One of them was held in the auditorium of the old high school.

Q. Do you recall whether or not you attended a meeting held in the auditorium of the First Baptist Church?

A. That's right, yes, I do.

Mr. Robinson: That is all.

[fol. 583] Cross examination.

By Mr. Gravatt:

Q. Viola, do you know the date on which you signed any authority for attorneys in the case?

A. Well, I really can't recall the date.

Mr. Gravatt: Did you examine this witness with respect to the authority?

Mr. Robinson: I asked her whether she did or not.

Mr. Gravatt: May I see it?

Mr. Robinson: I have the original if you would like to see it.

By Mr. Gravatt:

Q. The authorization is dated the 26th day of April. I believe that the strike that took place in Farnville began on the 23rd day of April; is that correct?

A. I think that is correct.

Q. Had you talked with Mr. Spottswood Robinson or Mr. Oliver Hill between the 23rd of April and the 26th of April?

A. No.

Q. Had you been to any meetings other than the meeting at the school? Had you been to any meetings at which any attorney was present before the 26th day of April?

A. No, I don't think so.

[fol. 584] Q. So that this paper was signed before you ever had any conference with Mr. Hill or Mr. Robinson?

A. Oh, yes.

Q. Have you ever talked, since the 26th of April, personally with Mr. Robinson or Mr. Hill about the litigation that you were in?

A. Yes.

Q. When?

A. I just can't recall the date.

Q. Recently or in the past?

A. Recently.

Q. Since this suit was instituted?

A. Yes.

Q. And they had not discussed with you anything about that litigation until they got ready to prepare you to testify in this case, had they?

A. How's that?

Q. They had not discussed anything with you about the Prince Edward litigation until they came to you with regard to testifying in this case; is that correct?

A. No.

Mr. Gravatt: That is all.

[fol. 585] Redirect examination.

By Mr. Robinson:

Q. Mrs. Neal, you made reference to a meeting that was held at the high school?

A. Yes.

Q. Was that meeting held during the first week that the children were out on strike?

A. Well, to be frank with you, I can't recall whether that was the first or not.

Q. You mentioned a meeting that was held in the basement of the First Baptist Church.

A. That is right.

Q. Do you remember about how long that meeting was from the meeting that was held at the high school?

A. No, I don't remember.

Q. Was it a long time or was it a short time? Do you remember?

A. It wasn't a long time.

Q. I beg your pardon?

A. It wasn't.

Q. You also mentioned a meeting that was held in the auditorium of the First Baptist Church; was that meeting held a long time or a short time after the meeting that was held at the school?

A. Well, it wasn't long.

[fol. 586] Q. Do you know Mr. Oliver W. Hill?

A. Yes.

Q. Do you know my name?

A. Yes.

Q. Did you have an occasion to talk to us? Did we have an occasion to discuss the matter of the suit with you and other parents at the meeting that was held in the basement of the First Baptist Church?

A. Yes.

Q. Did we have an occasion to discuss the suit at the meeting that was held in the auditorium of the First Baptist Church?

Mr. Mays: If Your Honors please, this may save time, but it is leading. The last few questions have been leading and I hope he won't continue to lead.

Mr. Robinson: I will try not, Mr. Mays, but I have to ask the questions.

By Mr. Robinson:

Q. (Continuing) You attended the meeting in the auditorium of the First Baptist Church?

A. Yes, I did.

Q. Did Mr. Hill and I have anything to do with the discussions that occurred at that particular meeting?

A. No.

[fol. 587] Q. In the auditorium of the First Baptist Church?

A. At this meeting?

Q. Yes.

A. Yes.

Q. Have you had occasion to talk to Mr. Hill and to me since these meetings to which you have just testified?

A. Yes, I have.

Q. About how many times would you say, Mrs. Neal?

A. About three times, I imagine.

Q. One final question. Will you state whether or not the meeting at the school, the meeting in the basement of the First Baptist Church, the meeting in the auditorium of the First Baptist Church—did those meetings occur before or after the suit against the school authorities was filed?

A. Afterwards.

Q. After the suit was filed?

A. What meeting are you speaking of? Let me get an understanding now. Wait a minute.

Q. The meeting at the Morton High School, the meeting in the basement of the First Baptist Church, the meeting in the auditorium of the First Baptist Church—had any suit been filed against—

Judge Soper: Excuse me, Mr. Robinson. It is quite unlikely that this woman herself would know when any [fol. 588] suit was filed in court, I would assume. In other words, I do not think in your questions you ought to assume that she knows that date.

By Mr. Robinson:

Q. Without undertaking to say the date, do you remember when the suit was filed?

A. Well, to be frank with you, I can't remember those dates. There are so many dates mixed up here together and I would like to tell the truth about it.

Q. Let me ask you this. Do you remember whether or not when these three meetings were held the children were still out on strike?

A. That's right.

Mr. Robinson: That is all.

Judge Soper: That is all. Thank you.

[fol. 589] GEORGE P. MORTON, called as a witness on behalf of the plaintiffs in rebuttal, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hill:

Q. Will you state your full name and address to the Court, please?

A. George P. Morton is my full name.

Judge Hoffman: You will have to raise your voice.

Mr. Hill: You will have to raise your voice. These judges have to hear.

A. (Continuing) My full name is George P. Morton, my address is Cullen, Virginia.

Q. What is your wife's name, Mr. Morton?

A. My wife's name is Emma H. Morton.

Q. In 1951, did you have any children attending the R. R. Morton High School in Farnville?

A. Yes, sir, two.

Q. Do you still have any children attending the Morton High School?

A. Yes, sir.

Q. Directing your attention to the latter part of April 1951, do you remember whether or not the children at the high school went out on strike?

[fol. 590] A. Yes, sir.

Q. As a result of their being out on strike, did you attend certain meetings in Farnville?

A. Yes, sir.

Q. Can you tell us where those meetings were held?

A. They were held in the church and the schoolhouse.

Q. Talk louder. The judges can't hear you.

A. One in the church and one in the schoolhouse.

By Judge Soper:

Q. One in the church and one in the schoolhouse?

A. Yes, sir.

Judge Soper: All right.

By Mr. Hill:

Q. Were more than one held in the churches?

A. Yes, sir.

Q. Did you attend a meeting at the First Baptist Church, pursuant to a notice for attending that meeting, in which two meetings were held, one in the basement of the church and one in the auditorium of the church on the same night?

Mr. Mays: If Your Honor please, I think we are continuing to lead. We are willing to have a certain amount of it, and I realize Mr. Hill has been sworn when he testified [fol. 591] fied, but we would rather have him testify from the chair than testify when interrogating the witness.

Mr. Hill: Okay, Mr. Mays.

By Mr. Hill:

Q. At this meeting which you say you attended in the basement of the church, who attended that meeting—just some of the people, not everybody?

A. Just the school children and parents.

By Judge Soper:

Q. Did you say the school children and their parents?

Mr. Hill: Yes, sir, that is what he said.

By Mr. Hill:

Q. Was there anyone there other than the children and their parents? If so, who were they?

A. Some more came in, but they were ordered out.

Q. And who ordered the other people out, other than the parents and the children?

A. The lawyers ordered them out.

Q. And who were the lawyers?

A. Mr. Robinson and Mr. Hill.

Q. Now, what was discussed with you at that meeting with just the parents and the children?

A. Well, what was discussed, the children had been on a strike and now they wanted a suit—wanted to bring a suit, or something, to protect them in the strike. They wanted to bring a suit, said they were tired of the school—

[fol. 592] Q. Talk louder. I can't hear you.

A. They didn't have room enough. When they changed classes, they had to go out in the rain or snow whenever it would be falling—they had to go in it.

Q. That was the complaint the children made; is that correct?

A. Yes, sir. So, now they want better schools and they said, to get better schools they would have to have a non-segregated school, and then they would have equal facilities.

Q. Who told you that to get better schools they would have to have non-segregated schools?

A. Well, that was for the advice of the lawyers, to find out what was best to do, and the parents then decided to employ lawyers, to put it in the lawyers' hands and work it out in the way they saw fit.

Q. Is it correct to say that what you have said is that at this meeting with the parents—

Mr. Mays: Don't lead him.

Mr. Hill: He mumbles so, I want to be sure the Court understands what he says.

Mr. Gravatt: Well, let him say it, not you.

Mr. Hill: Will you read the last question and answer?

[fol. 593] (The preceding question and answer were read by the Reporter.)

By Mr. Hill:

Q. That was at the meeting from which everybody was excluded except the parents and the children. After that meeting, did you subsequently go upstairs to the auditorium of the First Baptist Church?

A. Yes, sir.

Q. Did all the people go up there?

A. Yes, sir.

Q. What was discussed at this meeting upstairs at the First Baptist Church, the second meeting, that same night? Talk loud. The judges have got to hear you. They have got to decide this.

A. They discussed that they would have to bring a suit to get a non-segregated school—a better school and less trouble.

Q. That was discussed at this other meeting?

A. Yes, sir.

Q. Let me ask you this: It was in the newspapers that a suit had been filed?

A. Yes, sir, after it was filed.

Q. Since the suit was filed, have you talked with your lawyers?

[fol. 594] A. Yes, sir, I have talked with them.

Q. On how many occasions have you talked with the lawyers since the suit was filed, just to your best recollection? Just the number, not the occasions.

A. Two or three different times.

Q. Two or three different times. Have you received a notice from the lawyers to appear at a meeting?

A. Yes, sir.

Q. When you received that notice, did you attend the meeting?

A. Yes, sir.

Q. Were the other parents of school children in Prince Edward County present at that meeting?

A. Several of them was there.

Q. At these meetings, did the lawyers discuss the case with you?

A. Yes, sir.

Q. Was your child one of the intervenors in this case?

A. Yes, sir.

Q. Did you attend a meeting with the lawyers so they could ascertain that information?

A. Yes, sir.

Q. Let me ask you this: You say your wife's name is Emma H. Morton? Is that correct?

[fol. 595] A. Yes, sir.

Q. I show you this and ask you if you can recognize whose name is signed to it?

A. It is her name, Emma H. Morton.

Q. That is your wife's name?

A. Yes, sir.

Q. You recognize her signature?

A. Yes, sir.

Q. What are the names of the children there in school?

A. One is named George.

Q. Is that the one that was in school at the time of this strike?

A. Yes, sir.

Mr. Hill: That is all. Wait a minute. These gentlemen may want to ask you some further questions.

Mr. Gravatt: Let me see that paper you have just shown the witness, Mr. Hill, please, sir.

(A paper was handed to counsel.)

[fol. 596] Cross examination.

By Mr. Gravatt:

Q. What is your name?

A. My name?

Q. Yes.

A. George P. Morton.

Q. This paper is dated the 26th day of April and it is signed by your wife. Did you ever sign any paper?

A. No, I didn't sign it; she signed it.

Q. Were you in the suit at all?

A. Yes, sir.

Q. Were you named in the suit as a party to the suit?

A. I was a parent.

Q. Sir?

A. I was a parent of the child.

Q. You were the grandparent, weren't you?

A. Yes, sir.

Q. You were not the parent of the child, you were the grandparent?

A. Yes, sir; so was my wife.

Q. And wasn't your wife the party who employed the attorneys? You did not employ attorneys? You were not in the case, were you?

A. All the parents were there.

[fol. 597] Q. You think you were a plaintiff?

A. Yes, sir, I thought so.

Q. These meetings that you referred to, in the church, when everybody but the parents and the children were excluded, who called that meeting? Was that meeting called

by the Reverend Griffin? Did you get a letter from him notifying you to be at that meeting?

A. I got a notice. The children brought the message back from school.

Judge Soper: I can't hear a word he says.

Mr. Hill: Speak up so the judge can hear you.

A. (Continuing) I say, the children from school brought the message that the meeting was going to be, and sometimes we got notice to come to a meeting.

By Mr. Gravatt:

Q. Sometimes you got notice from Reverend Griffin?

A. From somebody.

Q. And the meeting was held in his church?

A. Yes, sir.

Q. What position does Reverend Griffin hold in the NAACP Branch in Prince Edward County?

A. I don't know just exactly.

Q. He is one of the big officials, isn't he?

A. Yes, sir.

Q. That meeting you refer to, do you know when that [fol. 598] meeting was held? How long after the strike was begun?

A. It wasn't very long after the strike.

Q. Was it a week?

A. It seems like it was less time than a week.

Q. You think it was less time than a week?

A. Yes, sir.

Q. Wasn't the meeting held on the first day of May?

A. It was held shortly after the strike.

Q. Shortly after the strike?

A. Yes, sir.

Q. You didn't sign any paper? Your wife signed it?

A. Yes, sir.

Q. And you don't know what conversations were had or what your wife understood about this suit?

A. They said to sign the paper to put the suit in for the child.

Q. For better schools?

A. Yes.

Q. Is that what you all were talking about?

A. They said for non-segregated schools.

Q. You want to be a plaintiff in a suit in Prince Edward County to have the white and colored children mixed in the public schools?

A. Well, that is the only way I thought they could get [fol. 599] equal facilities.

Q. If you get equal facilities, you are not interested in sending them to school together; is that correct?

A. Well, if they give us a school—I was a committee originally on the board for three or four years, trying to get more room and a better school.

Q. Right, and you have got a fine school there now, haven't you?

A. Well, we have got a very good school there.

Q. And, with that school, do you still want to send your children to the white school in Prince Edward?

A. Well, they didn't give us a school until we brought the suit.

Q. I understand, but you have got the school now?

A. Yes, sir.

Q. Are you satisfied with the school you have got—

Mr. Hill: May it please the Court—

Mr. Gravatt: Let me finish the question.

Mr. Hill: I submit the whole series of questions is just arguing with the witness.

Judge Soper: I don't think it has anything to do with bringing the suit—the fact that he may be satisfied with the school now.

Mr. Gravatt: My point is that this litigation resulted [fol. 600] in the construction of a nice school.

Judge Soper: Well, it is very happy that it has, but that has nothing to do with the point. I think the objection is well taken.

Mr. Gravatt: The point is, Your Honor, if this man does not want to insist on a decree to integrate the schools, he should have at least enough control over the litigation to advise his counsel.

Judge Soper: That is not the question before the Court at this time. The question is what happened at the time of the institution of this suit. That is the only thing he was examined about.

Mr. Gravatt: All right, sir. I think that it is relevant and I except to the ruling of the Court. I have no further questions.

GUY R. FRIDELL, JR., called as a witness on behalf of the plaintiffs in rebuttal, being first duly sworn, testified as follows:

Direct examination.

By Mr. Hill:

Q. Mr. Fridell, directing your attention to early May [fol. 601] 1951, at that time were you a newspaper reporter?

A. Yes, sir.

Q. Incidentally, Mr. Fridell, are you here voluntarily, or on a subpoena?

A. I was subpoenaed to come in.

Q. Did you have an assignment to cover a meeting in Farmville, Virginia, during the time of the school strike there early in May?

A. I did.

Q. Did you attend the meeting at the First Baptist Church in Farmville on May 3?

A. That's right.

Q. As a result of attending that meeting, did you write a newspaper report on it?

A. That's right; I wrote a story.

Q. Do you think you could recall some of the details of the meeting if your mind were refreshed from the newspaper article?

A. I can recall what was in the article, yes, sir.

Q. Can you recall it of your own recollection?

A. That's right.

Q. Will you state to the Court some of the people who talked to that meeting?

A. Well, you and Mr. Spottswood Robinson spoke and one of the students spoke, there was a minister who spoke; [fol. 602] those are four persons that I remember.

Q. Will you tell the Court whether the meeting was well attended or poorly attended?

A. It was well attended. The church was pretty well packed.

Q. Now, while you were there in attendance on that meeting, did you talk with parents and children also?

A. Yes. I circulated a good deal among the audience and talked with them to find out what their feelings were and what their opinions were.

Q. Was there talk at that meeting of filing a lawsuit?

A. Yes, there was.

Q. Will you tell the Court what type or kind of lawsuit there was talk of filing?

A. Well, as I recall it, you and Mr. Robinson told the audience that you were prepared to file suits which would bring about an end to segregation. Roughly, that was it.

Q. Was that clearly stated that night, that we contemplated bringing a suit to end segregation in Prince Edward County?

A. To my recollection, it was, but I want to suggest my story simply be put in the record, because I there wrote what I saw and heard.

[fol. 603] Q. I show you this and ask you if you can recognize this.

A. Yes, sir. That is my story.

Q. And that was the story you wrote as a result of attending this meeting?

A. That's right.

Q. Will you read that story?

A. The entire story?

Mr. Gravatt: It is not necessary to read it.

Judge Soper: I don't think it is necessary.

Mr. Gravatt: We have no objection to filing it.

Judge Soper: I understand.

Mr. Hill: Your Honor, may we file it with the request that we be permitted to withdraw it and have photostatic copies made and filed in lieu of the original?

Judge Soper: Yes, indeed. There is no objection to that.

Mr. Hill: With that understanding, we will just have it marked.

(The newspaper article referred to, marked Plaintiff's Exhibit No. 13, was filed in evidence.)

Mr. Hill: You may cross-examine.

[fol. 604] Mr. Gravatt: We have no questions:

Mr. Robinson: If the Court please, that may be all for the plaintiffs, but we would like to ask the indulgence of the Court in a brief recess so that we can canvass the situation. I can assure the Court that if we have any additional rebuttal testimony to put on, it will consume only a short space of time.

Judge Soper: I don't know that I quite understood Mr. Mays' suggestion, and perhaps that can be worked out during this recess.

Mr. Mays: I am hopeful it can. I think we will not have to ask the time of the Court at all.

Judge Soper: All right. Take a brief recess.

(A recess was taken, after which the proceedings were resumed.)

PLAINTIFFS REST

Mr. Robinson: If the Court please, that is all for the plaintiffs.

Mr. Mays: We are through, sir. We have a stipulation to present to the Court.

Judge Soper: We will be very glad to have you present it.

Mr. Mays: If Your Honors please, at page 184* of the [fol. 605] record, beginning at that point (I merely make it for reference), Mrs. Sarah Brooks testified (and she was a witness on economic reprisals, you will remember) and indicated she had been dismissed from the service of an employer because she was in the NAACP.

Counsel stipulate and agree that since that time she has been fully employed by white families in Charlottesville, Virginia.

Is that correct?

Mr. Robinson: That is correct.

Mr. Mays: It is further stipulated among all counsel that the newspaper which has been offered in evidence and known as *The Norfolk Journal and Guide*, is published under the auspices of a Negro publisher and editor and that the other newspapers are under the auspices of white editors and publishers.

* Printed herein at page 239.

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Soper: Now, Gentlemen, we would like to discuss with you the question of briefs. It was suggested tentatively the other day that these briefs be filed by the 7th of October, which will be two weeks from Monday, and that the argument of the case would take place during that week. It is the intention of the Court that the argument take place on Thursday, the 10th.

May I add this other suggestion—I throw it out for discussion—I have no doubt that you have all given a good [fol. 606] deal of thought to this case. You are not attacking a brand-new problem in giving these briefs at this time. I realize there may be something in the briefs that are filed that counsel will want to make reply to. It seems to me there would be no objection to filing the briefs as of the date suggested and having the argument two or three days later, and then after the argument, either because of things in the briefs or things that are said in the course of argument, if counsel on either side want an opportunity to file additional briefs, they will be given an opportunity to do so, and in that way any deficiencies that occur to you in the original briefs may be supplemented and counsel would not feel they were taking too much chance in getting the first briefs in on the 7th of October. I say the 7th because we would like to have a chance to examine them before the argument, and we want a full argument. We would like to have suggestions as to how much time counsel would like. Tentatively, I would suggest two hours on each side, but let us hear from you on that subject.

What do the plaintiffs have to say?

Mr. Robinson: If Your Honor please, the tentative date is satisfactory to us and the 10th is satisfactory to us. We welcome the suggestion of filing supplemental briefs and, as far as the argument is concerned, we think two hours [fol. 607] will be sufficient on our side.

Judge Soper: What do the defendants have to say?

Mr. Mays: We will meet those deadlines, sir.

Judge Hoffman: Gentlemen, I believe Judge Soper will be in Richmond on October 7 and, of course, Judge Hutcheson will be here. Will you be good enough to send my copy direct to Norfolk, because I will not be here until the 10th.

Judge Soper: Now, there was certain material requested by the defendants' attorneys to be furnished by the plaintiffs' attorneys. Has that been attended to?

Mr. Robinson: We have completed a summary of that, and, as mentioned to counsel during recess, we will complete our summary of the data and get it filed just as promptly as we can.

Judge Soper: When you do that, will you send copies to each of the members of the Court?

Mr. Robinson: Yes, sir, we will be glad to send them.

Judge Soper: In addition to that, it was suggested, I think, by Mr. Gravatt that he would be satisfied with your recital of the high spots of the Prince Edward litigation, and I assume also the Arlington litigation ought to be described—what action took place in those cases—so that [fol. 608] will be in the record. Will you send that along with the other material?

Mr. Robinson: Yes, sir, I will be glad to.

Mr. Gravatt: If the Court please, I believe we have also had the understanding with Mr. Robinson that we will agree who the plaintiffs in the Newport News case were without the necessity of proof thereof. We have a list of who we are advised are the plaintiffs and he said he would examine it and satisfy himself as to its accuracy.

Judge Soper: That calls to mind that we have had discussion of the plaintiffs in these other suits. Someone told me that in this Prince Edward case there were 185.

Mr. Robinson: I don't recall the exact number.

Judge Soper: That is one of the items that ought to be set out.

Mr. Robinson: Would the Court be interested in the listing of plaintiffs other than in the Prince Edward case and the Newport News case which Mr. Gravatt has prepared?

Judge Soper: I am not quite certain what was said in the record about the Newport News case.

Mr. Robinson: We have checked the list of plaintiffs in the Newport News case and it is accurate, and I can supply the Court with a list of the plaintiffs in the Prince [fol. 609] Edward case, with a listing of the other plaintiffs in the cases in which we have been connected, if the Court would like to have that.

Judge Soper: We want the dates the suits were filed and the disposition of the suits; in other words, not a very detailed thing, but what would be on the docket of the court as to the very situation in the litigation.

Mr. Robinson: We will be very glad to do that.

Judge Soper: I don't know that we need all the names, but that will be left to your discretion.

Mr. Mays.

Mr. Mays: Your Honor, we have one unresolved matter, and that is the newspapers that were offered in evidence. If we have to deal with the subject of admissibility in our brief, that means one approach, but as yet we do not know the Court's pleasure as to whether they will be introduced or not.

Judge Soper: The Court has not conferred about that. It is conceivable that the newspaper articles are not admissible at all; it is conceivable that they may be admissible for certain purposes, and the plaintiffs' attorneys have set out the purposes for which they think the articles are admissible. I suggest that in your brief you discuss that question and, if you do not agree with them, state the matter. We won't rule on the admissibility until we get [fol. 610] the briefs.

Mr. Mays: One other point was—and I do not mean to be insistent—that affects our treatment fact-wise in our brief if we do not know in advance what the Court's ruling will be.

Judge Soper: I think you may assume that they may be admitted for some purposes, but state the facts as far as you think it necessary to state them. I shall endeavor to make a resumé of what is in those articles and send copies to my colleagues, so the Court will have an idea of what it is they are ruling on when we have the legal discussion.

Mr. Mays: And I understand the other side will furnish us with the copies that were not furnished us in advance of trial—those that we didn't get?

Judge Soper: Surely. But all that you are insisting on, or have been insisting on, have been filed as exhibits? Is that correct, Mr. Robinson?

Mr. Robinson: That is correct.

Mr. Mays: But some we did not receive.

Judge Soper: I understand, and you will fill those vacancies.

The Clerk: Does the argument start at 10 a. m.?

Judge Soper: Yes, I think we will have the arguments at ten o'clock on that day.

[fol. 611] Gentlemen, may I say in behalf of the Court that we are grateful to counsel for the way in which the trial has been conducted. Of course, the Court realizes it is a case in which there is great public interest and considerable feeling on both sides, and counsel have helped us very much in their presentation and there has been no untoward incident, and we are very happy to have had your assistance. We are looking forward to even more assistance on October 10.

Adjourn the court.

(Thereupon, further proceedings were continued until October 10, 1957, at ten o'clock a. m.)

[fol. 612] REPORTERS' CERTIFICATE TO FOREGOING TRANSCRIPT (omitted in printing).

[fol. 613]

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

PLAINTIFF'S EXHIBIT 1

UNITED STATES OF AMERICA
STATE OF NEW YORK

by

CARMINE G. DESAPIO

Secretary of State and Custodian of the Great Seal Thereof.

IT IS HEREBY CERTIFIED, That SAMUEL LONDON was, on the day of the date of the annexed Certificate and Attestation, Deputy Secretary of State of the State of New York, duly authorized by the laws of said State to make the same and to perform the duties belonging to the Secretary of State in relation thereto, in like manner as said Secretary of State; that such Certificate and Attestation are in due

form and executed by the proper officer; that the seal affixed to said Certificate and Attestation is the Official Seal of the Department of State of the State of New York; that the signature thereto of the said Deputy Secretary of State is in his own proper handwriting and is genuine and that full faith and credit may and ought to be given to his official acts, and, further, that the Secretary of State is the Custodian of the original Certificate of Incorporation so certified and attested and Custodian of the Great Seal of said State, hereunto affixed.

[The Great Seal of the State of New York]

IN TESTIMONY WHEREOF, The Great Seal
of the State is hereunto affixed.

WITNESS my hand at the City of Albany, the eighth day of October, in the year of our Lord one thousand nine hundred fifty-six.

CARMINE G. DESAPIO
Secretary of State

By /s/ FRANK A. EMMA
ELG
Deputy Secretary of State

[fol. 614]

SUPREME COURT—NEW YORK COUNTY

In the Matter of
the

CERTIFICATE OF INCORPORATION
of

THE NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE

State of New York,
County of New York, ss.:

C. AMES BROOKS being duly sworn deposes and says that he is an attorney at law with offices at No. 43 Cedar St.,

New York City and that he is one of the attorneys for the National Association for the Advancement of Colored People, that no previous application has been made for the approval of the annexed certificate of incorporation of the National Association for the Advancement of Colored People.

/s/ C. AMES BROOKS

Sworn to before me this
6th day of June 1911

JAS L. McNEIRNY
Notary Public
New York County

[fol. 615]

CERTIFICATE OF INCORPORATION

—of the—

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE.

We, the undersigned, being of full age and desirous of associating ourselves together for the purposes herein below specified, pursuant to and in conformity with the Acts of the Legislature of the State of New York relating to membership corporations, do hereby certify and declare that we are of full age and two-thirds of us citizens and Residents of the United States and residents of the State of New York, and further as follows:—

That the principal objects for which the corporation is formed are voluntarily to promote equality of rights and eradicate caste or race prejudice among the citizens of the United States; to advance the interest of colored citizens; to secure for them impartial suffrage; and to increase their opportunities for securing justice in the courts, education for their children, employment according to their ability, and complete equality before the law.

To ascertain and publish all facts bearing upon these subjects and to take any lawful action thereon; together with any and all things which may lawfully be done by a mem-

bership corporation organized under the laws of the State of New York for the further advancement of these objects.

To take, receive, hold, convey, mortgage or assign all such real estate and personal property as may be necessary for the purposes of the corporation.

The corporate name by which the corporation shall be [fol. 616] known is

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

The territory in which the operations of the corporation are principally to be conducted shall be the United States of America.

The principal office of the corporation and the center of its operations shall be in the City, County and State of New York, but the Directors may establish branch or auxiliary offices elsewhere in the United States for the purpose of carrying on the work of the corporation, each to be managed by its local organization under such powers as lawfully may be prescribed in the by-laws of the corporation.

The principal office of the corporation shall be in the Borough of Manhattan, in the City, County and State of New York.

The number of directors of the corporation shall be thirty.

The names and places of residence of the persons to be directors of the corporation until its first annual meeting are as follows:—

Mr. Moorfield Storey, 735 Exchange Bldg., Boston, Mass;
Mr. John E. Milholland, Hotel Manhattan, New York, N.Y.;
Bishop Alexander Walters, 208 W. 349 St., New York, N.Y.;
Oswald Garrison Villard, 20 Vesey St., New York, N.Y.;
Mr. Walter E. Sachs, 60 Wall St., New York, N.Y.;
Dr. William E.B. DuBois, 233 W. 63rd St., New York, N.Y.;
Mary White Ovington, Hotel St. George, Brooklyn, N.Y.;
Rev. William H. Brooks, 231 West 53rd St., New York, N.Y.;
Dr. John Lovejoy Elliott, Ethical Culture Society, New York

Mr. Thomas Ewing, Jr., 67 Wall St., New York, N.Y.
 Rev. John Haynes Holmes, 28 Garden Place, Brooklyn,
 N.Y.;

Mrs. Florence Kelley, 105 E. 22nd St., New York, N.Y.;
 Mr. Paul Kennaday, 640 Madison Avenue, New York, N.Y.;
 Mrs. Frances R. Keyser, 217 E. 86th St., New York, N.Y.;
 Mrs. Mary D. McLean, 259 W. 92nd St., New York, N.Y.;
 Rev. A. Clayton Powell, 255 W. 134th St., New York, N.Y.;
 Mr. Charles Edward Russell, Hotel Broztell, New York,
 N.Y.;

Prof. Joel E. Spingarn, 9 W. 73rd St., New York, N.Y.;
 Miss Lillian D. Wald, 265 Henry St., New York, N.Y.;
 Mr. William English Walling, Hotel Brevoort, New York,
 N.Y.

Dr. Owen M. Waller, 762 Herkimer St., Brooklyn, N.Y.
 Mr. W.I. Bulkley, Ridgefield Park, N.J.
 Mr. Albert E. Pillsbury, 6 Beacon St., Boston, Mass.;
 Miss Jane Addams, Hull House, Chicago, Ill.;
 Mrs. Ida B. Wells Barnett, 3235 Rhodes Ave., Chicago, Ill.;
 [fol. 617] Dr. Charles E. Bentley, 100 State St., Chicago,
 Ill.;
 Dr. Noah F. Mossell, 143 Lombard St., Philadelphia, Pa.
 Dr. William A. Sinclair, 1221 Pine St., Philadelphia, Pa.;
 Mrs. Mary Church Terrell, 326 T St., N.W. Washington,
 D.C.

Rev. J. Milton Waldron, 1334 V St., Washington, D.C.

The annual meeting of the corporation shall be held on
 the first Monday of January in each year.

IN TESTIMONY WHEREOF, we have made and signed this
 certificate in duplicate and have hereunto set our hands
 and affixed our respective seals this 25th day of May, 1911.

/s/ JOHN HAYNES HOLMES (L.S.)

/s/ OSWALD GARRISON VILLARD (L.S.)

/s/ W. E. B. DuBois (L.S.)

/s/ WALTER E. SACHS (L.S.)

/s/ MARY WHITE OVINGTON (L.S.)

STATE OF NEW YORK,
 COUNTY OF NEW YORK, ss.:

On this 25th day of May, 1911, before me personally came
 Oswald Garrison Villard Walter E Sachs & Mary White
 Ovington to me known, and known to me to be the indi-
 viduals described in and who executed the foregoing instru-
 ment, and they acknowledged to me that they executed the
 same.

(Seal)

/s/ H C Wood
 Notary Public, #27
 Kings County. Cert filed in NY Co

[fol. 618]

3028

STATE OF NEW YORK,
 DEPARTMENT OF STATE, ss.:

I CERTIFY That I have compared the preceding copy with
 the original Certificate of Incorporation of

NATIONAL ASSOCIATION FOR THE
 ADVANCEMENT OF COLORED PEOPLE,

filed in this department on the 16th day of June, 1911, and
 that such copy is a correct transcript therefrom and of the
 whole of such original.

(Seal)

WITNESS my hand and official seal of the Department
 of State at the City of Albany, this twenty-
 seventh day of June, one thousand nine hundred
 and fifty-six.

/s/ SAMUEL LONDON
 ELG
 Deputy Secretary of State.

[fol. 619]

STATE OF NEW YORK,
 COUNTY OF NEW YORK, ss.:

On this 30th day of May, 1911, before me personally came
 John Haynes Holmes and W E B Dubois to me known, and
 known to me to be the individuals described in and who

executed the foregoing instrument, and they acknowledged to me that they executed the same.

(Seal)

/s/ H C Wood
Notary Public, #27
Kings County.
Cert filed in NY Co

I, Daniel F. Cohalan Justice of the Supreme Court of the State of New York in and for the First Judicial District, DO HEREBY APPROVE, the form of Certificate of Incorporation, and consent that the same be filed.

Dated, New York, June 9th, 1911.

/s/ DANIEL F. COHALAN
Justice of the Supreme Court, First
Judicial District.

(Seal)
[fol. 619]

145

Book 84 Page 471

M. L. H.
G C P

CERTIFICATE OF INCORPORATION

—of the—

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE.

STATE OF NEW YORK,
Office of SECRETARY OF STATE,

Filed and

Recorded JUN 16 1911

EDWARD LAZANSKY
Secretary of State

WHERRY & MORGAN
ATTORNEYS
Office and Post Office Address
93 CEDAR STREET
NEW YORK CITY, N. Y.

164, 620

Plaintiff's Exhibit 2

CONSTITUTION

of the

NATIONAL ASSOCIATION
FOR THE ADVANCEMENT
OF COLORED PEOPLE



20 West 40th Street
New York 18, N. Y.

1957

426

CONSTITUTION
OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED
PEOPLE

ARTICLE I

NAME

The name of this Association shall be the National Association for the Advancement of Colored People.

MEMBERSHIP

1. Any person who is in accordance with the principles and policies of the Association may become a member of this Association with the consent of the Board of Directors, by accepting membership in writing under and in accordance with this Constitution and by paying annually in advance a membership fee of at least Two Dollars (\$2.00).

2. The Board of Directors shall have power to create such classes of membership as it may deem desirable, and may issue appropriate certificates of membership to persons entitled thereto.

ARTICLE II

BOARD OF DIRECTORS

1. The Association shall have a Board of Directors not exceeding forty-eight (48) mem-

bers, one of whom shall be elected from the Youth Councils or College Chapters of the Association.

2. The present Directors shall continue to serve for the terms for which they were elected, and thereafter sixteen Directors shall be elected annually (by ballot by the Association) as hereinafter provided for a term of three years and until their successors are chosen. Any vacancy occurring during the year may be filled by the Board of Directors for the unexpired term.

3. (a) Election of Board of Directors: The said Association shall have a Nominating Committee consisting of seven (7) members of the Association; four (4) to be elected by the delegates to the Annual Convention; three (3) to be elected annually by the Board of Directors from its own members. Members of the Nominating Committee are ineligible for nomination to the Board of Directors during the year in which they serve on said committee. The Nominating Committee shall meet during the third week in September. It shall submit to the Executive Secretary not later than October 1 of each year nominations for all vacancies to be filled on the Board of Directors. The Executive Secretary shall forthwith send to all Branches and have published in the next issue of the *Crisis*, or other official organ of the Association, the said report of the Nominating Committee. In the event that no Annual Convention is held in any year, the members elected by the Convention delegates to the preceding Annual Convention shall serve on the Nominating Committee until the next Annual Convention.

(b) Independent nominations may be made by petitions signed by not less than thirty (30) members of the Association in good

standing by filing the same with the Executive Secretary not later than November 1 of each year. The Executive Secretary shall send to each Branch of the Association, not later than November 15 of each year, a ballot containing the nominations of the Nominating Committee, plus the nominations by independent petition. Each Branch at its annual meeting shall, by vote of the members present, make its choices for members of the Board of Directors. The said choices shall be marked upon the ballot submitted by the Executive Secretary and the said ballot shall be signed by the president and secretary of the Branch and must be returned to the national office not later than December 31 of each year. The said ballots shall be held by the Executive Secretary in a safe place until the Annual Meeting.

(c) At each Annual Meeting the said ballots shall be opened by a committee selected at said Annual Meeting and counted on the following basis:

	Members		Votes
Branches of from	50 to	100*	2
	100	500	3
	500	1,000	4
	1,000	2,500	5
	2,500	5,000	6
	5,000	10,000	8
	10,000	20,000	9
	over 20,000		10

* See note, page 12.

Any ballot or ballots containing the name or names of any persons for election to the said Board not nominated in accordance with this Constitution shall be void.

ARTICLE III

OFFICERS

1. The officers of the Association shall consist of a President, Chairman of the Board of Directors, such vice-presidents as the Board of Directors may elect, a Treasurer, an Executive Secretary, and such other officers as the Board of Directors from time to time may designate and elect. The said officers shall be elected by the Board of Directors as soon after the Annual Meeting as the new Board can conveniently convene for the purpose.

2. The President, Vice-Presidents, Treasurer, and Chairman of the Board of Directors shall be elected for a term of one year; all other officers shall be elected for a term of one year, unless the Board of Directors shall by resolution passed at the time of the particular election order otherwise. Any vacancy in office may be filled by the Board of Directors for the unexpired term.

3. The President, Vice-Presidents, Treasurer, and Chairman of the Board of Directors shall take office immediately after their election, and they shall serve their respective terms of office computed from the day of said election or until their respective successors shall be elected and shall qualify.

4. The Board of Directors may from time to time employ such executive officers as it deems necessary.

ARTICLE IV

DUTIES OF OFFICERS

1. The President of the Association shall perform such functions and exercise such duties as may be voted by the Board of Directors. He shall preside at all meetings of the Association, and, in the absence of the Chairman of the Board, at all meetings of the Board of Directors. He shall be ex-officio member of all committees.

2. The Vice-Presidents shall perform such functions and exercise such duties as may be voted by the Board of Directors.

3. The Chairman of the Board of Directors shall hereafter between meetings of the Board have general control and supervision of the Association, with full authority over all officers and employees of the Association, subject to such limitations as the Board may from time to time impose. He shall preside at all meetings of the Board and shall appoint all committees of the Association not elected directly by the Board. He shall be ex-officio member of all committees.

4. The Treasurer shall be the chief financial officer of the Association and shall have general charge of its fiscal affairs. He shall receive regular reports on the finances of the Association from all Divisions, Branches, Departments and Bureaus thereof, and shall inspect the books and audit the accounts thereof, from time to time. He shall render to the Board of Directors at their regular meetings, or whenever they require, an account of his transactions as Treasurer and shall submit a report of the financial condition of the Association at its Annual Meeting.

5. The Executive Secretary shall have charge of the general secretarial work of the Association. He shall coordinate and integrate the work of the several Divisions, Branches, Departments, and Bureaus, and shall aid and cooperate in the work of all committees. He shall submit reports to the Board at its regular meetings, or whenever it requires, covering the state of the Association and its activities

since the date of his last report. He shall make an annual report covering the status of the Association and its activities. He shall perform such other functions and exercise such further duties as may be assigned him by the said Board.

6. In the absence of any officer or employee, or for any other reason that may be deemed sufficient, the Board of Directors may delegate such officer's or employee's powers and duties to any other officer or employee, or to any director for the time being.

ARTICLE V COMMITTEES

1. The Board of Directors may create such standing or special committees in addition to those prescribed herein as it considers advisable to carry out any purposes connected with the work of the Association.

2. Salaried officers and staff members shall be eligible for committee assignment, except on committees dealing with personnel and employment.

ARTICLE VI DIVISIONS, DEPARTMENTS AND BUREAU

The Board of Directors shall have power to create from time to time such regional Divisions and such Departments or Bureaus of the Association as it may deem advisable to carry out the objects for which the Association was created.

ARTICLE VII BRANCHES

The Board of Directors may create Branches, Youth Councils, College Chapters, and such

other units of the Association in such places and under such conditions as it sees fit. Each of the above shall be administered under a charter granted to it by the Board of Directors and in accordance with the Constitution and By-Laws authorized by said Board of Directors.

ARTICLE VIII MEETINGS OF DIRECTORS

1. Regular meetings of the Board of Directors shall be held on the second Monday of each month unless such Monday be a holiday, in which event the meeting of that month shall be held on the first business day thereafter; except that the regular meeting in January in each year shall be held on the same day as the Annual Meeting.

2. A special meeting of the Board of Directors may be called by any officer of the Association upon the written request of any three (3) members of the Board. The object of such meeting shall be stated in the notice therefor and the business transacted in the meeting shall be limited to the object so stated.

3. The Executive Secretary shall give the members of the Board seven (7) days' notice in writing of its regular meetings and three (3) days' notice of any special meeting of the Board.

4. One-third of the members of the Board shall be necessary to constitute a quorum for the transaction of business, except to adjourn.

ARTICLE IX CONVENTION

1. The Association shall have an Annual Convention to be held at the time and place determined in the following manner: the 1955

Convention shall select the time and place for both the 1956 and 1957 Conventions; thereafter each Convention shall set the time and place for the Convention of the second succeeding year. The Annual Convention of the Association shall have power to establish policies and programs of action for the ensuing year. All actions of the Convention on the question of policy and program, which are not contrary to this Constitution, shall be binding on the Board of Directors, officers, Branches, Youth Councils, College Chapters, and other subordinate units of the Association except as hereinafter provided; no proposal for change of policy or program of action shall be in order unless it shall have been submitted by a Branch in good standing to the Executive Secretary at least sixty (60) days prior to the Annual Convention and published in the Bulletin or the *Crisis* prior to the Annual Convention; action of the Convention pertaining to policy or program of action shall be valid only if passed during the last two business days of the Convention. All actions of the Convention on matters of policy and program of action shall be considered by the Board of Directors at its next regular meeting and if the Board expresses its disapproval by two-thirds vote of members of the Board present and voting, the matter shall then be submitted to the Branches, Youth Councils and College Chapters for final action; each Branch, Youth Council and College Chapter shall vote on said matter and notify the Executive Secretary of such action within thirty days of receipt of same; and this action of Branches, Youth Councils and College Chapters shall be counted by the use of the scale of voting set out in Article II, Section 3.

2. (a) Representation of Branches, Youth Councils and College Chapters at the Annual

ARTICLE IX, SECTION 2 SHOULD READ:

2. (a) Representation of Branches, Youth Councils and College Chapters at the Annual Conventions shall be on the following basis:

	Voting Delegates	
	Members	Delegates
Youth Councils & College Chapters of from _____	25 to	50* 1
Branches, Youth Councils & College Chapters.....	50	100 2
	100	500 3
	500	1,000 4
	1,000	2,500 5
	2,500	5,000 6
	5,000	10,000 8
	10,000	20,000 9
	over 20,000	10

* See note, page 12.

(b) Representation shall be on the basis of membership as recorded in the national office thirty (30) days prior to the opening date of each convention. All voting at conventions must be by delegates present and may not be exercised by proxy.

(c) Each Branch, Youth Council and College Chapter is entitled to a number of alternate delegates equal to the number of voting delegates. Alternate delegates shall be permitted to vote in place of absent voting delegates.

(d) Each State Conference shall be entitled to one voting delegate and one alternate.

Conventions shall be on the following basis:

	Members	Voting Delegates
Youth Councils & College Chapters of from	25 to	50* 1
Branches, Youth Councils & College Chapters.....	50	100 2
	100	500 3
	500	1,000 4
	1,000	2,500 5
	2,500	5,000 6
	5,000	10,000 8
	10,000	20,000 9
	over 20,000	10

* See note, page 12.

(b) Each Branch, Youth Council and College Chapter is entitled to a number of alternate delegates equal to the number of voting delegates. Alternate delegates shall be permitted to vote in place of absent voting delegates.

(c) Each State Conference shall be entitled to one voting delegate and one alternate.

3. (a) Delegates to the Annual Convention shall be elected by the Branches at their regular monthly meetings prior to the Convention.

(b) Delegates representing State Conferences shall be elected at the meeting of the State Conference preceding the Annual Convention, or by special meeting called in accordance with by-laws of the State Conference.

4. (a) Each delegate must present to the Convention a certificate of election as delegate, signed by the president and secretary of the Branch. Blank forms for certificates and duplicate certificates must be furnished by the National Office. A duplicate of all such certificates must be returned to the National Office

and the original thereof presented to the Convention.

(b) Each State Conference delegate must present to the Convention a certificate of election as delegate, signed by the president and secretary of the State Conference.

5. Convention Committees: During the first regular session of the Convention the following committees shall be elected by the delegates:

- A. Resolutions
- B. Credentials
- C. Time and place
- D. Rules

A. The Committee on Resolutions: Shall take charge of all resolutions referred to it and report thereon to the Convention with proper recommendations.

B. The Committee on Credentials: Shall examine and report upon the credentials of all delegates to the Convention.

C. The Committee on Time and Place: Shall take charge of all invitations for next Annual Convention and report its recommendations to the Convention.

D. The Committee on Rules: Shall, with the Constitution and *Robert's Rules of Order* as its guide, recommend to the Convention rules for the government of the Convention while in session.

The duties of the foregoing committees shall expire with the adjournment of each Convention.

ARTICLE X

ANNUAL MEETING

The Annual Meeting of the Association shall be held on the first Monday in January in each

year unless such Monday be a holiday, in which event the Meeting of that year shall be held on the first business day thereafter, at such time and place as the Board of Directors may determine. The presence of twenty-five (25) members in good standing shall be necessary to constitute a quorum.

ARTICLE XI

LIMITATION OF LIABILITY

No Division, Branch, Department, Bureau, or unit of the Association shall have authority or power to impose or incur financial liability on the part of the Association without the express authorization of the Board of Directors, first obtained in writing in advance.

ARTICLE XII

ORDER OF BUSINESS

Unless altered or suspended at any meeting by a majority vote of the members present, the following shall be the order of business at the meetings of the Association, the Board of Directors, or any Division, Branch, Department, Bureau or unit of the Association:

- Roll Call, or ascertainment of members present
- Reading of Minutes of previous meeting
- Reports of officers
- Reports of committees
- Elections
- Unfinished business
- New business

Rules of procedure as laid down in *Robert's Rules of Order* shall govern such proceedings except as otherwise provided.

ARTICLE XIII AMENDMENTS

1. This Constitution may be amended by a unanimous vote of all members of the Board of Directors present at a regular meeting or by a two-thirds ($2/3$) vote of the members of the Board of Directors present at two (2) successive meetings, regular or special, notice of the proposed change or changes to be sent out with the notices of the meetings.

2. An amendment proposed by a majority of the paid-up members of a Branch in good standing must be voted upon by the Board.

ARTICLE XIV NOTICE TO MEMBERSHIP

Whenever the provisions of the statutes of New York or this Constitution require notice to be given to the membership, such notice shall be given by notifying the president of each Branch of the Association by mail and by the printing of the notice in the *Crisis* or other official organ of the Association, if any.


ARTICLE XV SCHEDULE

This Constitution becomes effective when adopted.

Adopted July 7, 1945

Amended to June, 1955

Note to ART. II, Sec. 3(c); ART. IX, Sec. 2(a)
On May 13, 1957, the Board of Directors voted to interpret this table so as to make each numerical class inclusive at its upper limit: e.g., a Branch of 100 members has (2) votes (or voting delegates); a Branch of 500 members has (3) votes (or voting delegates); and so on.

(See Opposite) 

CONSTITUTION

and

BY-LAWS

for

BRANCHES

of the

**NATIONAL ASSOCIATION
FOR THE ADVANCEMENT
OF COLORED PEOPLE**



20 West 40th Street
New York 18, N. Y.

April, 1958

CONSTITUTION AND BY-LAWS FOR BRANCHES

of the
National Association for the Advancement of
Colored People

ARTICLE I.

NAME AND OBJECT

Section 1 The name of this organization shall be
Name the (name of city or county) Branch of
 the National Association for the Advancement of Colored People.

Section 2 The _____ Branch shall be
Object a constituent and subordinate unit of
 the Association, subject to the general
authority and jurisdiction of the Board of Directors
of the Association. Its objects shall be to promote
the economic, political, civic and social betterment
of colored people and their harmonious cooperation
with other peoples, in conformity with the articles
of incorporation of the Association, its constitution
and by-laws, and as directed by the Board of Directors of the Association.

ARTICLE II.

OFFICERS

Section 1 (a) The elective officers of the Branch shall be a President, Vice-President, **Officers** Secretary, and Treasurer; also, at the option of the Branch, additional Vice-Presidents and an Assistant Secretary. The officers shall be elected as hereinafter provided.

(b) Other Officers may be Chairman of the Executive Committee, to be selected by said Committee from within its ranks; and such paid officers (Executive Secretary, etc.) as budgets of larger branches may warrant.

(c) Paid officers shall be selected by the Executive Committee.

(d) Executive Secretaries or other paid officers shall not be members of the Executive Committee.

Section 2 The duties of the President shall be: **President** (a) To preside at meetings of the Branch and to act as Chairman of the Executive Committee, unless the Executive Committee elects some other member of its body to be chairman.

(b) To appoint all committees not directly elected by the Branch or the Executive Committee.

(c) Between meetings of the Executive Committee and the Branch and subject to the approval thereof, to exercise general executive authority on behalf of the Branch.

(d) To perform such other functions and exercise such further duties as may be voted from time to time by the Branch or the Executive Committee.

(e) To countersign all requisitions by the Secretary for disbursements from the Branch treasury.

The President shall be ex-officio a member of all

committees, except the Nominating Committee as provided in Article IV, Section 4.

Section 3 The duties of the Vice-President shall be to perform all the duties of the **Vice President** in his absence or disability. In case of more than one Vice-President, the Vice-Presidents shall be designated as first, second, third, etc., and shall perform their duties according to their numerical rank.

Section 4 The duties of the Secretary shall be: **Secretary** (a) To act as Secretary of the Branch and the Executive Committee, to give due notices of all meetings of the Branch and the Executive Committee, to keep full and accurate records of the proceedings of the Branch and of the Executive Committee and record the same in a minute book or minute books, provided that in branches employing a paid staff, the responsibility of giving the membership due meeting notice shall be discharged by said staff under the supervision of the secretary.

(b) To keep a record of all Branch members and their dues, provided that wherever a paid staff is employed such duties shall be discharged by said staff under the supervision of the secretary.

(c) To give receipts for all membership fees received and to transmit such fees to the Branch Treasurer; to send promptly to the National Office lists of all memberships received; to secure from the Treasurer and forward to the National Office that portion of membership fees belonging to the National Office.

(d) To aid, coordinate and integrate the work of the several committees and divisions of the Branch, provided that wherever an Executive Secretary is employed, such duties shall be discharged by said Executive Secretary.

(e) To submit reports to the Branch and the Executive Committee at all regular meetings, or whenever required by either body, covering the status of the Branch and its activities since the date of the last report; to submit to the Branch at its annual meeting an annual report on the status and activities of the Branch, provided that wherever an Executive Secretary is employed, such duties shall be discharged by said Executive Secretary. A copy of all reports by the Secretary when adopted by the Branch shall be forwarded to the National Office.

(f) To keep the Secretary of the National Association for the Advancement of Colored People informed of all events affecting the interests of colored people in the vicinity of the Branch, and to submit to the National Office, whenever required by the National Office, a report on Branch activities, provided that wherever an Executive Secretary is employed, such duties shall be discharged by said Executive Secretary.

(g) In conjunction with the President, to sign requisitions for disbursements from the Branch treasury and to maintain a file of receipts for disbursements.

The Secretary shall be ex-officio a member of all committees, except the Nominating Committee as provided in Article IV, Section 4.

Section 5 The duties of the Treasurer shall be:
Treasurer (a) To receive all monies of the Branch and promptly to deposit the same in the name of the Branch in a separate account or accounts in a responsible bank or trust company. No money shall be withdrawn from any such account except on check signed by the Treasurer and countersigned by the President.

(b) To act as chief financial officer of the Branch

and Chairman of the Finance Committee.

(c) To make authorized disbursements upon requisitions signed by the Secretary and countersigned by the President. Each requisition shall recite the amount and purpose of the payment requested. Every requisition in the amount of one hundred dollars or more must further be approved by the Executive Committee before payment. The Branch by regulation may require that requisitions in smaller amount be approved by the Executive Committee.

(d) To remit through the Secretary to the National Office the proportion of membership fees to which the National Office is entitled, as hereinafter provided, within fifteen days after their receipt (Article V, Section 4).

(e) To submit reports to the Branch and the Executive Committee at all regular meetings, or whenever required by either body, covering the financial condition of the Branch showing receipts and disbursements, outstanding accounts unpaid since his last report; to submit an annual report of the business of his office at the annual meeting of the Branch, to which shall be appended a statement signed by the President and Secretary that all funds received by the Branch have been listed in the Treasurer's report. A copy of all reports by the Treasurer, when adopted by the Branch, shall be forwarded to the National Office.

The Branch may require the Treasurer to be bonded at the expense of the Branch.

Section 6 The duties of the Chairman of the Executive Committee shall be:

Chairman of the Executive Committee (a) To preside at all meetings of the Executive Committee.

(b) To encourage and assist all committees in the development of their programs and the performance of their duties.

(c) To recommend to the Executive Committee the removal of any delinquent chairmen of standing or special committees.

(d) To recommend to chairmen of standing or special committees the removal of delinquent members thereof, and to insist that said chairmen immediately replace such personnel so relieved of duty.

The Chairman of the Executive Committee shall be ex-officio a member of all committees, except the Nominating Committee.

Section 7 The duties of the Executive Secretary shall be:

Executive Secretary (a) To give due notices of all meetings of the Branch as provided in Section 4(a) of this Article.

(b) To keep a record of all Branch members and their dues as provided in Section 4(b) of this Article.

(c) To send promptly to the National Office lists of all memberships received; and to secure from the Treasurer and forward to the National Office that portion of the membership fees belonging to the National Office in cooperation with the secretary.

(d) To aid, coordinate and integrate the work of the several committees and divisions of the Branch.

(e) To manage the Branch office and paid staff; and to supervise the annual membership campaign.

(f) To interview complainants; to act in the name of the Branch on behalf of complainants with valid grievances; to investigate in the name of the Branch reported or alleged or suspected discriminatory practices in any phase of community life; to represent the Branch at various meetings of other organizations approved by the Executive Committee; to lend the Branch to active cooperation with

such other organizations as may be approved by the Executive Committee; to discharge such other duties as may arise in the province of his activity, or as may be assigned by the Executive Committee.

(g) To submit reports of activities of the Branch and the Executive Committee at all regular meetings, or whenever required by either body; to submit to the Branch at its annual election meeting an annual report covering activities. A copy of all reports when adopted by the Branch shall be forwarded to the National Office.

(h) To keep the Secretary of the National Association informed of all events affecting the interests of colored people in the vicinity of the Branch.

The Executive Secretary is responsible to the Branch, to the Executive Committee; and between meetings of the Branch and the Committee to the President.

ARTICLE III.

COMMITTEES

Section 1 The Executive Committee shall have general control of the affairs of the Branch, subject to the authority of the Branch and to the provisions of this Constitution. It shall consist of the President, First Vice-President, Secretary, Treasurer, the Chairman of the Executive Committee and the Chairmen of the standing committees of the Branch, the President of the Youth Council, the President of College Chapter in the same community, the Senior Branch Adviser in the Youth Council, the Senior Branch Adviser of the Junior Youth Council, and such other members to be elected at the annual meeting of the Branch as the Branch by by-law may decide,

provided that the total membership of the Executive Committee shall not exceed thirty-five except by written authorization of the Board of Directors of the Association.

The Executive Committee shall render a report, which shall contain the reports of all standing and special committees, to the Branch at the regular meetings of the Branch and whenever otherwise required by the Branch.

The further duties and powers of the Executive Committee shall be:

(a) At its first meeting following the annual election meeting, to select a Chairman of the Executive Committee.

(b) At this first meeting, to create the various standing and special committees, the Chairman of each to be selected by the President, subject to the advice and consent of the Executive Committee.

(c) To create special committees as needs arise.

(d) To fill all vacancies in Branch offices or on committees for the unexpired term.

(e) To decide matters of Branch policy subject to endorsement by the Branch and to accord with National Office policy.

(f) To appoint, employ and enter into contract with paid employees of the Branch subject only to employment procedure and qualifications approved by the National Office.

QUORUM—The quorum of the Executive Committee shall be determined by the Branch but shall not be less than one-third of its total membership.

Section 2 The Standing Committees of the Branch shall be the Committees on Standing Membership, Finance, Community Committees Coordination, Press and Publicity, Legal Redress, Legislation, Labor and Industry,

Education, Entertainment, Youth Work, Housing, and Veterans.

The Committees on Finance, Press and Publicity, Labor and Industry, Youth Work, and Veterans, shall consist of not less than three nor more than seven members.*

The members of all standing and special committees, except the Nominating Committee, shall be appointed by their respective Committee Chairmen.

The duties of the standing committees shall be:

(a) **MEMBERSHIP.** The Membership Committee shall work throughout the year to maintain and increase the membership of the Association. It shall be responsible for drafting plans and recruiting workers for the annual membership campaign and for organizing adequate campaign machinery. Between annual membership campaigns the committee shall seek to renew old memberships as they expire and to secure new members.

(b) **FINANCE.** The Finance Committee, which shall consist of the President, Treasurer, and at least one other member, shall study the financial needs of the Branch and shall be responsible for drafting an adequate annual budget. It shall initiate fund raising projects for special local and national purposes within the scope of the Branch program.

(c) **PRESS AND PUBLICITY.** The Press and Publicity Committee shall endeavor to secure publicity in the local press for the work of the Branch and the Association. By personal visits and correspondence, it shall attempt to interest editors in local conditions affecting colored people and in the race question in general.

It shall watch carefully the publications of the

* Amended by Convention June, 1956.

community and report thereon to the appropriate committee.

The Press and Publicity Committee shall be responsible for forwarding to THE CRISIS items covering Branch activities and important local affairs. It shall also act as far as possible as an agency for the promotion and sale of THE CRISIS.

No publicity shall be released by the Press and Publicity Committee without first being approved by the President of the Branch.

(d) **LEGAL REDRESS.** The Legal Redress Committee shall include lawyers where possible. It shall investigate all cases reported to it for legal redress, consulting when necessary with the attorneys of the National Legal Committee, and shall watch over all litigation in which the Branch is interested; and keep the Branch Executive Committee informed on the progress of every case.

The Legal Redress Committee shall not give general legal advice.

(e) **LEGISLATION.** The Legislation Committee should also include lawyers where possible, and if not, should seek advice from members of the National Legal Committee nearest to the Branch.

It shall examine the state laws and local ordinances for possibilities of discrimination, work for better and equal enforcement of the laws, sponsor beneficial legislation and work for the repeal of discriminatory laws.

It shall keep the Executive Committee of the Branch and the National Office promptly informed of all proposed legislation which affects colored people specifically and minorities generally.

The Legislation Committee shall work very closely with the Legal Redress Committee of the Branch.

(f) **LABOR AND INDUSTRY.** The Labor and

Industry Committee shall seek ways and means of improving the economic status of colored people in particular and of improving general working conditions in industry, in agriculture, and in Federal, state and municipal employment.

It shall induce the Branch membership to join and engage in the activities of responsible organized labor unions and shall promote community action in support of fair labor standards and practices.

The Labor and Industry Committee objectives shall be:

(1) Elimination of: discriminatory employment practices in industry and government which result in refusal to hire colored workers; wage differentials based on race; unequal opportunities for training and promotion; unfair dismissals; and segregation in employment because of race.

(2) Greater participation of colored persons in the trade union movement.

(3) Ending of segregated locals, auxiliaries, and any other discriminatory practices in labor unions.

(4) Inclusion of non-discrimination clauses in state and federal laws pertaining to the employment of persons in the execution of government contracts.

(5) Joining with labor unions for the enactment of legislation favored by labor and for the repealing of unfavorable labor legislation.

(6) Expanding and improving opportunities for vocational training on the basis of non-segregation.

(g) **EDUCATION.** The Committee on Education shall study local educational conditions affecting colored people. It shall aim to be a center of popular education on the race question and the work of the National Association. It shall seek to

stimulate attendance of colored youth in schools and shall visit the schools so as to keep informed of conditions and strive to correct abuses where found.

The Committee on Education shall investigate the public school system and examine school boundaries. It shall become familiar with textbook material used and shall seek to eliminate derogatory material from textbooks; it shall seek to eliminate segregation, quota systems and other discriminatory practices in public schools.

(h) **ENTERTAINMENTS.** The Committee on Entertainments shall work very closely with the Committee on Finance and the Committee on Education to promote entertainments that will be both educational and financially profitable. It shall have charge of entertainments of such kind as are approved by the Executive Committee.

(i) **YOUTH WORK.** The Committee on Youth Work shall consist of the Senior Branch Adviser to the Youth Council, the Senior Branch Adviser to the Junior Youth Council, the Youth Council President, and the Junior Youth Council President. The membership of this Committee may be increased by the Branch Executive Committee to seven members.

Its duties shall be to develop the youth program of the Branch and to coordinate the programs of the senior and youth groups.

(j) **COMMUNITY COORDINATION.** The Committee on Community Coordination shall seek to enlist the support of other community organizations on issues affecting the interests of minority groups.

(k) **VETERANS.** The Committee on Veterans shall study conditions pertaining to veterans in the community, shall familiarize veterans with pro-

cedure to be followed to obtain loans, benefits, jobs and hospitalization in local communities. It shall serve as a clearing house for complaints, counseling service and general information on veterans' laws, rights and benefits. It shall prepare and distribute material advising veterans of their welfare and shall serve as a liaison between branch and local veterans' agencies, organizations and government.

The further duties and powers of the Veterans Committee shall be:

(1) To serve as a center of information on material issued affecting Negro veterans.

(2) To serve as a source of information to veterans and their families seeking information on government agencies serving veterans.

(3) To receive and act on all veterans' complaints relative to discrimination on account of race, color or creed, or denials of benefits in local areas because of discrimination.

(l) **HOUSING.** The Committee on Housing shall study housing conditions in local communities and shall carry on a program in support of slum clearance, urban redevelopment and the provision of adequate, safe and sanitary housing, both by public and private building. It shall receive and adjust complaints of discrimination in housing, whether public or private, and shall oppose all restrictive practices such as racial restrictive covenants and discriminatory government policies, and shall disseminate information and render other assistance for the development of mutual housing and other cooperative housing programs.

Section 3 Members of the Executive Committee shall hold office for one year and until their successors are elected and qualify, or until such time as their conduct disqualifies them

for office and warrants their removal as provided in Section 4.

Section 4 Non-functioning committees shall be promptly discharged by the Executive Committee and, where necessary, new appointments made by the Executive Committee for the unexpired terms or unfulfilled purposes either directly upon the initiative of the Executive Committee or upon recommendation of the Chairman of the Executive Committee or of the President, if no Executive Committee Chairman has been elected.

The position of any member of the Executive Committee or of any standing or special committee who shall be absent from three consecutive meetings of the Committee, without notice or explanation to the Committee, or who shall not perform required duties for three consecutive months, shall be declared vacant by the Executive Committee. A member of any standing or special committee may be directly removed by his chairman for dereliction of duty.

ARTICLE IV.

ELECTION OF OFFICERS AND EXECUTIVE COMMITTEE

Section 1 The officers and Executive Committee elected at the organization meeting of the Branch shall hold office until their successors are elected and qualify, unless removed for dereliction of duty.

Section 2 All those who signify their intention of becoming charter members of the Branch and their endorsement of the aims and purposes of the National Association for the Advancement of Colored People and who have paid the prescribed fees shall be entitled to vote at the organization meeting and to be elected to office.

Section 3 Thereafter, all officers and the Executive Committee shall be elected by ballot at each annual meeting of the Branch and shall hold office for one year and until their successors are elected and qualify.

Section 4 (a) At the October membership meeting of the Branch there shall be elected a Nominating Committee composed of not less than five nor more than fifteen members, who shall have been members of the Branch in good standing at least thirty (30) consecutive days prior to the October meeting; provided that no more than two members of the Nominating Committee shall be an officer of the Branch or member of the Executive Committee.

This Committee will promptly meet, elect a Chairman and it shall interview qualified persons to be nominated as candidates for Branch offices.

The report of the Nominating Committee, consisting of nominations of qualified persons to fill the existing Branch offices, and the members of the Executive Committee for the ensuing year, shall be made in writing to the November membership meeting of the Branch.

At said November membership meeting of the Branch, additional nominations may be made for all offices and membership on the Executive Committee by written petition signed by three or more members of the Branch in good standing as of

* Amended by Convention June, 1956.

thirty days prior to said meeting. No one shall be nominated without first obtaining his or her written or oral consent.

After all nominations shall have been made, the Branch at said November meeting will then elect an election supervisory committee to consist of three members of the Branch in good standing. It shall be the duty of this special committee to cause to be either printed, mimeographed, or typewritten, a complete ballot containing the correct names of all persons thus nominated. The ballot, so prepared under the supervision of said special committee, shall be the only ballot to be used on the election day at the Annual Election Meeting of the Branch.

(b) In case a Nominating Committee is not elected, or neglects or fails to render a report, all nominations shall be by petition at the November meeting as provided above.

(c) At least seven days written notice, stating time, place and purpose shall be sent to each member of the Branch in good standing prior to the October and November meetings of the Branch.

Section 5 All officers and the Executive Committee shall be elected by secret ballot at each Annual Election Meeting of the Branch and shall hold office for one year and until their successors are elected and qualify, unless removed for dereliction of duty, subject to the provisions of Article III, Section 3. Upon proof of qualification, eligible voters shall receive and sign for one ballot each and thereupon immediately proceed to vote secretly.*

No Officer of the Branch, nor any candidate for office, shall occupy the chair at annual election meetings.

The names of the various candidates for office shall be clearly announced or posted in a place

* Amended by Convention June, 1953. Approved by National Board Oct. 13, 1953.

visible to all present at the annual election meeting. Tellers to count the ballots shall be appointed in equal number by the candidates for office of President. No Officer of the Branch, nor any candidate for office, shall serve as teller.

The number of eligible voting members shall be established before voting begins and such members shall be seated apart from other persons present.

Voting shall be by secret ballot and shall commence not later than two hours after the announced time of the meeting.* When balloting commences the doors of the place of meeting shall be closed to tardy members, and shall not be opened until after the report of tellers has been made.

Section 6 All members who at least thirty (30) days prior to the Annual Election Meeting have paid the prescribed fees to the Branch, and all whose member-

ships have been transferred to the Branch from the National Office shall be entitled to vote at said meeting and to be elected to office.

Thereafter, all members who are in good standing by noon of the day of any meeting of the Branch not an Annual Election meeting, shall be entitled to vote at that meeting and to hold office in the Branch.

Section 7 In the event of election controversy, all parties thereto shall submit complaints to the National Office in writing within five days from date of the election meeting.

Copies of complaints will be submitted to the Branch by the National Office. Should such complaints, in the opinion of the National Office, warrant intercession, a new election may be ordered by the Board of Directors to be held not later than thirty days in which case a National Officer or person designated by the National Office

* Amended by National Board of Directors, Sept., 1948.

shall preside. The designated presiding officer shall order the procedure of the called election meeting; and the results of the election thus supervised shall be accepted as final by all controversial parties thereto, and by the Branch.

In the event the National Office decides to intervene in a contested election for the office of President, Secretary, or Treasurer, upon receipt of notice to that effect by mail or otherwise, no officer of the Branch shall disburse funds from the Branch treasury unless otherwise instructed by the National Office pending settlement of the controversy.

Section 8 The right to vote is personal and may
 Right to not be exercised by proxy.
 Vote

ARTICLE V.

MEMBERSHIP AND DUES

Section 1 Any person who is in accordance
 Membership with the principles and policies of the
 Association may become a member of
 the Branch in accordance with the articles of incor-
 poration and the constitution and by-laws of the
 Association by paying annually in advance a fee of
 at least Two Dollars.* Membership in the Branch
 shall include membership in the National Association.

Section 2 Any person paying an annual member-
 ship of three dollars and fifty cents or
 more shall be entitled to receive THE
 CRISIS without further charge for one
 year.*

Section 3 Members of the National Association
 Membership in good standing where branches are
 in Branch being formed, or who establish per-
 manent residence in a community
 wherein a branch is in existence, may affiliate with

† Amended by National Board of Directors, Sept., 1950.

* Amended by National Board of Directors, Sept., 1948.

the local Branch and be entitled to vote upon presenting satisfactory evidence of their membership. They shall not be assessed annual membership fees by the Branch until the expiration of the annual membership for which they have paid.

Section 4 The Branch shall remit to the Treas-
 Division urer of the National Association the
 of Fees National Office's share of all member-
 ship fees within fifteen days of their
 receipt, in the following proportions, and may re-
 tain the balance in its treasury for local purpose:

(a) MINIMUM SENIOR MEMBERSHIP (for
 persons twenty-one years of age or over) \$2.00; to
 National Office \$1.00; local treasury \$1.00.*

(b) MINIMUM SENIOR MEMBERSHIP
 WITH CRISIS (for persons twenty-one years of
 age or over) \$3.50; to National Office \$2.50; local
 treasury \$1.00.*

(c) BLUE CERTIFICATE MEMBERSHIP
 \$5.00; to National Office \$3.50; local treasury \$1.50.

(d) GOLD CERTIFICATE MEMBERSHIP
 \$10.00; to National Office \$6.00; local treasury
 \$4.00.

(e) YOUTH MEMBERSHIP (for persons under
 17 years of age) \$0.50; to National Office \$0.25;
 local treasury \$0.25.

(f) YOUTH MEMBERSHIP WITH CRISIS
 (for persons under 17 years of age) \$2.00; to
 National Office \$1.75; local treasury \$0.25.

(g) Each membership, contribution or donation
 of \$5.00 or more, shall be divided as follows:

(1) \$2.00 to the National Office to cover actual
 cost of THE CRISIS and other national
 literature regularly received by such mem-
 bers.

(2) The balance in excess of \$2.00 to be

* Amended by National Board of Directors, Sept. 13, 1948.

divided equally between the soliciting Branch and the National Office.

Section 5 (a) **LIFE MEMBERSHIP** of \$500 or more shall be divided as follows: **Life Membership** three-fifths (\$300.00) to the National Office, two-fifths (\$200.00) to the Branch, provided the Life Membership is solicited through the local Branch.*

Junior Life Membership (b) **JUNIOR LIFE MEMBERSHIP** of \$100 for children twelve (12) years of age and under, shall be divided as follows: three-fifths (\$60.00) to the National Office, two-fifths (\$40.00), to the Branch, provided the Junior Life Membership is solicited through the local Branch.**

(c) The Branch may use its share of the Life Membership and Junior Life Membership for local purposes wherever and whenever needed.***

Section 6 Wherever the Branch comes within the jurisdiction of a state or regional conference, assessments on the Branch for support of the conference shall be paid into the National Office and transmitted by the National Office to the treasury of the state or regional conference. The amount of such assessments shall be determined by the state or regional conference with the approval of the National Board of Directors.

The National Office will match local assessment for State Conferences; provided that the National Office assessment shall not exceed ten cents (10¢) per member where the Branch assessment is ten cents (10¢) or more per member; and provided further that the National Office receives written request for such payment from the State Conference.*

* Amended by National Board of Directors, Sept. 8, 1947.

** Established by National Board of Directors, June 26 and Sept. 9, 1957.

*** Amended by Convention June, 1956.

Section 7 The net proceeds of each entertainment or fund-raising effort by a branch shall be divided equally between the Branch and the National Office, unless written permission is obtained from the National Office for some different division; provided, that the entire net proceeds of any fund-raising effort for exclusively national purposes shall be transmitted to the National Office.

A financial report of all such entertainments and activities shall be rendered to the Branch, the National Office and the public.

ARTICLE VI. MEETINGS

Section 1 Regular meetings of the Branch shall be held at least once a month, and such other public or special meetings as may be required. Regular meetings shall be held on a fixed day or date of each month.

Section 2 The Annual Election Meeting, which may coincide with the regular meeting of the Branch, shall be held between November 1 and December 15, unless the time of the meeting is changed with the written approval of the National Office.

Section 3 Written notice of time and place of the Annual Election Meeting shall be sent by the Secretary, at least seven (7) days prior to the date of the Meeting, to each member of the Branch in good standing.

Notice of the regular monthly or special meetings shall be sent to each member in good standing in writing, or published in some local newspaper of adequate circulation.

Section 4 Special meetings may be called at any time and place on three days' written notice to all members by direction of the President, or of any three members of

the Executive Committee; or on failure of these to act, by any ten members of the Branch.

Section 5 The Executive Committee shall meet at least once a month at such times and places as it may determine. **Executive Committee** Special meetings of the Executive Committee may be called by the President, the Chairman of the Committee, the Secretary, or by two members of the Committee, on two days' written notice.

Section 6 The Standing Committees shall meet regularly once a month at places they may determine.

Standing Committees They shall inform the Chairman of the Executive Committee and the President, if no Chairman of the Executive Committee is elected, of the time and place of meeting.

Special meetings may be called by the chairman or by two members on two days' written notice. All standing committees shall report each month to the Executive Committee at its regular meeting.

Section 7 In the event a quorum is not present at any regular or special meeting of the Branch or committee of the Branch, those present at the time and place announced for said meeting, may adjourn the same from time to time to a day, hour and place certain, and without further notice all business which might lawfully have been transacted at the original meeting may be transacted at the adjourned meeting.

ARTICLE VII. QUORUM

The number of members necessary to constitute a quorum at all meetings shall be decided upon by a resolution adopted by the Branch.

ARTICLE VIII. ORDER OF BUSINESS

Unless altered or suspended at any meeting by a majority of the members present, the following

shall be the order of business at meetings of the Branch:

- Ascertainment of members present
- Reading of minutes of previous meeting
- Reports of officers
- Reports of committees
- Elections
- Unfinished business
- New business

Rules of procedure as laid down in Robert's Rules of Order shall govern the Branch except as otherwise herein provided.

ARTICLE IX. REMOVAL OF OFFICERS

Section 1 If a Branch fails to report to the National Office for a period of four consecutive months, the National Board of Directors may declare any or all of the officers of the Branch vacant and order a new election.

Notice of removal shall be sent to the President, Secretary, and Treasurer of the Branch by registered mail at their last addresses on file in the National Office and shall be published in the official organ of the National Association. Immediately upon the service of notice by the National Office, the officers shall perform no official act and shall hold all records and monies of the Branch, subject to the disposition of the National Office.

Section 2 The National Board of Directors upon satisfactory evidence that the officer is **Neglectful** guilty of gross neglect of his official duties, or of such conduct as would **and Unfit** be inimical to the best interest of the **Officers** National Association for the Advancement of Colored People or of the Branch, shall instruct the Executive Committee to declare such office vacant and hold a new election by the Branch for said

office within thirty days. If said Executive Committee fails or neglects to remove said officers within thirty days, the National Board of Directors may declare such office vacant and conduct a new election.

The charges against the officer must be preferred in writing and signed by the person or persons making the same, and forwarded to the National Office. Immediately on receipt of the same, the Secretary of the National Association shall forward a copy of the charges by registered mail to the officer at his last address on file in the National Office. No action shall be taken on the charges until fifteen days after the copy should have reached the officer by ordinary course of post. He shall be entitled within the fifteen days to file with the National Office his answer in writing to the charges. The National Board of Directors reserves the right to hear and act on the charges and defense of written statement, affidavit or oral testimony as in its judgment justice may require.

Notice of the findings and action of the Board shall be sent to the officer by registered mail at his last address on file in the National Office and, in the discretion of the Board of Directors, published in the official organ of the National Association. Immediately upon the entry of the National Office into the matter, the officer shall perform no official act and shall hold all records and monies of the Branch subject to the disposition of the National Office.

ARTICLE X. SUSPENSION AND REVOCATION OF CHARTER

Section 1 The Charter of authority received by the Branch upon its admission to the National Association for the Advancement of Colored People, may be suspended or revoked by the Board of

**Suspension
and
Revocation**

Directors of the Association whenever the Board shall deem it for the best interest of the Association, provided however that a full hearing on charges be held before the National Board of Directors, at which the Branch may be represented by person or persons of its choice. Such revocation shall not invalidate the membership of any member of the Branch in the National Association.

Section 2 Notice of the findings and action of the Board shall be sent by the Secretary of the Association, by registered mail, to the President and Secretary of the Branch, and may be published in the official organ of the National Association. In case the Charter of the Branch is suspended or revoked upon receipt of notice by the President or Secretary by mail, publication, or otherwise, the Branch shall cease to function and the officers shall forthwith forward all records, property and monies of the Branch to the National Office where the same may be applied in its discretion for the benefit of the community wherein the Branch was located.

ARTICLE XI. BY-LAWS

With the written approval of the National Board of Directors previously obtained, a Branch may adopt or amend By-Laws not inconsistent with this constitution or the constitution of the Association; Provided, that (1) notice in writing of the proposed amendment shall be given to all members at least seven days prior to the meeting at which the same is to be acted upon; or that (2) the proposed amendment shall be approved at two successive regular meetings of the Branch.

This constitution may be amended by a two-

thirds vote of any Annual Convention of the Association, provided the proposed amendment be submitted to the Board of Directors of the Association at least sixty days prior to the convention and the Secretary shall publish same in the official bulletin of the Association.

ARTICLE XII.

AUTHORIZED COMMITTEES

Groups of seven or more individuals in communities too small to maintain a branch of the Association may be authorized by the Board of Directors to work as Authorized Committees of the National Association for the Advancement of Colored People carrying out its purposes and objects and raising funds for its support as does a Branch, subject to such rules and regulations as the National Board of Directors may enact.

It shall receive from the National Office a Certificate of Authority.

ARTICLE XIII.

YOUTH COUNCILS AND JUNIOR YOUTH COUNCILS

Section 1 Branches of the Association may organize Youth Councils and Junior Youth Councils which shall be subordinate to the Executive Committee and under the immediate supervision of the Youth Work Committee.

Section 2 There shall be a Senior Adviser to the Youth Council and a Senior Adviser to the Junior Youth Council in conformity

with the rules of the Association. The Adviser must be a member of the Senior Branch or a member at large of the Association.

Section 3 Not more than three names shall be sent by the Youth Council to the Selection of Adviser Senior Branch of persons which the group feels will work best with them as Adviser. The Senior Branch must select from the submitted names the Adviser to the Youth Council.

Section 4 Youth Councils are clearly subordinate to Branches insofar as they initiate programs and procedures not previously approved by action of the National Board of Directors or by resolution passed at National Conventions of the Association.

Youth Councils must secure prior approval of the Executive Committee of the Branch before engaging in projects involving litigation or legislation.

Section 5 Within fifteen (15) days after a controversy arises between a Youth Council and a Senior Branch, the senior adviser, the presidents and secretaries of both units shall prepare and forward signed report(s) to the executive secretary of the Association for arbitration, decision or referral to the appropriate regional office or state conference for investigation and other action.

Respective parties shall send copies of all reports submitted by them to state conference or regional office and to the other party to the controversy. The original report to the executive secretary shall contain a statement that copies have been forwarded as provided above.*

* Amended by Convention June, 1953. Approved by National Board Oct. 13, 1953.

ARTICLE XIV.

WOMAN'S AUXILIARY

Branches of the Association may organize a Woman's Auxiliary subject to the control of the Executive Committee and to such rules and regulations as the National Board of Directors may enact.

ARTICLE XV.

Section 1 No indebtedness or obligation shall be incurred by the Branch or any of its officers or agents in the name of the Non-Limitation of National Association National Office shall not be responsible for any indebtedness or obligation incurred by the Branch or by any of its officers or agents.

Section 2 No indebtedness or obligation of more than fifty dollars shall be incurred in the name or behalf of the Branch unless by vote of the Executive Committee.

ARTICLE XVI.

FISCAL BUSINESS YEAR

Section 1 The fiscal and business year of the Schedule Branch shall begin January 1 and end December 31.

Section 2 The officers elected at the annual meeting shall be installed at the next regular meeting of the Branch following the election.

[fol. 622]

PLAINTIFF'S EXHIBIT 6

CHAPTER 2

An Act to provide for submitting to the qualified electors the question of whether there shall be a convention to revise and amend Section 141 of the Constitution of Virginia. (H 1)

Approved December 3, 1955

Whereas, by Item 210 of the Appropriation Act of 1954 (Acts of Assembly, 1954, Chapt. 708, p. 970), the General Assembly sought to enact measures to aid certain war orphans in obtaining an education at either public or private institutions of learning, which said Item has been adjudicated by the Supreme Court of Appeals of Virginia, insofar as it purports to authorize payments for tuition, institutional fees and other expenses of students who attend private schools, to be violative of certain provisions of the Constitution respecting education and public instruction; and,

Whereas, the State's entire program, insofar as attendance at private schools is concerned, involving the industrial rehabilitation program, grants for the education of war orphans, grants in aid of Negro graduate students, and scholarships for teaching and nursing, is in jeopardy; and,

Whereas, in order to permit the handicapped, war orphans, Negro graduate students and prospective teachers and nurses to receive aid in furtherance of their education at private schools and in order to insure educational opportunities for those children who may not otherwise receive a public school education due to the decision of the Supreme Court of the United States in the school segregation cases, it is deemed necessary that said provisions of the Constitution be revised and amended; and,

Whereas, it is impossible to procure such amendments and revisions within the time required to permit educa-

tional aid forthwith for the current school year and that beginning in the fall of 1956 except by convening a constitutional convention; and,

Whereas, because it is deemed unwise at this time to make any sweeping or drastic changes in the fundamental laws of the State, and also, in order to assure the adoption of the contemplated amendments and revisions within the time necessary to permit educational aid in the school year of 1956-57, it is deemed necessary that the people eliminate all questions from consideration by said convention save and except those essential to the adoption of those revisions and amendments specified in this Act; and,

Whereas, in order to avoid heated and untimely controversies throughout the State as to what other matters, if any, may or should be acted upon by said convention, it is believed to be in the public interest to submit to the electors the sole question whether a convention shall be called which will be empowered by the people to consider and act upon said limited revisions and amendments only, and not upon any others; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. #1. That at an election to be held on such day as may be fixed by proclamation of the Governor (but not later than sixty days after the passage of this Act) there shall be submitted to the electors qualified to vote for members of the General Assembly the question "Shall there be a convention to revise the Constitution and amend the same?" Should a majority of the electors voting at said election vote for a convention, the legal effect of same will be that the people will thereby delegate to it only the following powers of revision and amendment of Section 141 of the Constitution and no others:

[fol. 623] A. The convention may consider and adopt amendment to Section 141 of the Constitution of Virginia necessary to accomplish the following purposes, and no others:

To permit the General Assembly and the governing bodies of the several counties, cities and towns to appro-

priate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate and graduate education of Virginia students in public and nonsectarian private schools and institutions of learning in addition to those owned or exclusively controlled by the State or any such county, city or town.

B. The convention shall be empowered to proclaim and ordain said revisions and amendments adopted by it within the scope of its powers as above set forth without submitting same to the electors for approval, but the convention will not have the power to either consider, adopt, or propose any other amendments or revisions.

#2. The judges of election and other officers charged with the duty of conducting elections at each of the several voting places in the State are hereby required to hold an election upon the said question of calling the convention on the day fixed therefor by proclamation of the Governor, at all election precincts in the State, but the several electoral boards may, in their discretion, dispense with the services of clerks of election in such precincts as they may deem appropriate. Copies of the Governor's proclamation shall be promptly sent by the State Board of Elections to the secretary of each electoral board and due publicity thereof given through the press of the State and otherwise if the Governor so directs.

#3. The ballots to be used in said election the State Board of Elections shall cause to be printed, and distributed and furnished to the respective electoral boards of the counties and cities of the State. The number furnished each such board shall be determined by the State Board of Elections within the limits prescribed by # 24-213 of the Code of Virginia. The respective electoral boards shall cause the customary identification seal to be stamped on the ballots delivered to them. In order to insure that the electors will clearly understand the limited powers which may be exercised by the convention, if called, said ballots shall be printed in type not less in size than small pica and contain the following words and figures:

"Constitutional Convention Ballot:

"INFORMATORY STATEMENT

"The Act of the General Assembly submitting to the people the question below provides that the elector is voting for or against a convention to which will be delegated by the people only the limited powers of revising and amending Section 141 of the Constitution to the extent that is necessary to accomplish the following purposes, and no other powers:

"To permit the General Assembly and the governing bodies of the several counties, cities and towns to appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate and graduate education of Virginia students in public and nonsectarian private schools and institutions of learning in addition to those owned or exclusively controlled by the State or any such county, city or town.

"The act also provides that the legal effect of a majority vote for a convention will be that the people will delegate to it only the foregoing powers, except that the convention will be empowered to ordain and proclaim said revisions and amendments adopted by it within the scope of said powers without submitting same to the electors for approval, but the convention will not have the power to either consider, adopt or propose any other amendments or revisions.

"In the light of the foregoing information the question [fol. 624] to be voted on is as follows:

"Shall there be a convention to revise the Constitution and amend the same?

" ☐ For the convention.

" ☐ Against the convention."

#4. A ballot deposited with a cross mark, a line or check mark placed in the square preceding the words "For the convention" shall be a vote for the convention, and a ballot deposited with a cross mark, line or check

mark preceding the words "Against the convention" shall be a vote against the convention.

#5. The ballots shall be distributed and voted, and the results thereof ascertained and certified, in the manner prescribed by section 24-141 of the Code of Virginia. It shall be the duty of the clerks and commissioners of election of each county and city, respectively, to make out, certify and forward an abstract of the votes cast for and against the convention in the manner now prescribed by law in relation to votes cast in general State elections.

#6. It shall be the duty of the State Board of Elections to open and canvass the said abstracts of returns, and to examine and make statement of the whole number of votes given at said election for and against the convention, respectively, in the manner now prescribed by law in relation to votes cast in general elections; and it shall be the duty of the State Board of Elections to record said certified statement in its office, and without delay to make out and transmit to the Governor of the Commonwealth an official copy of said statement, certified by it under its seal of office.

#7. The Governor shall, without delay, make proclamation of the result, stating therein the aggregate vote for and against the convention to be published in such newspapers in the State as may be deemed requisite for general information. The State Board of Elections shall cause to be sent to the clerks of each county and corporation, at least fifteen days.

places of voting therein; and it shall be the duty of such clerks to forthwith deliver the same to the sheriffs of their respective counties and sergeants of their respective cities for distribution. Each such sheriff or sergeant shall forthwith post a copy of such Act at some public place in each election district at or near the usual voting place in the said district.

#8. The expenses incurred in conducting this election, except as herein otherwise provided, shall be defrayed as in the case of the election of members of the General Assembly.

#9. The State Board of Elections shall have authority to employ such help and incur such expense as may be necessary to enable it to discharge the duties imposed on it under this Act, the expenses thereof to be paid from funds appropriated by law.

2. An emergency existing, this Act shall be in force from the time of its passage.

[fol. 625]

PLAINTIFF'S EXHIBIT 7

CHAPTER 1

AN ACT to provide for the election of delegates to a constitutional convention, the issuance of a writ for same, for the convening of said delegates, the organization and functioning of said convention, and to appropriate funds to defray the expenses of same.

(S. 26)

Approved January 19, 1956

Whereas, the State Board of Elections has certified to the Governor that at the election held on the ninth day of January, nineteen hundred fifty-six, pursuant to the provisions of Chapter two of the Acts of the Extra Session of the General Assembly of nineteen hundred fifty-five, a majority of the qualified voters of this State participating in said election voted in favor of a constitutional convention to revise and amend # 141 of the Constitution of Virginia to permit the General Assembly and the governing bodies of the several counties, cities and towns to appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate and graduate education of Virginia students in public and nonsectarian private schools and institutions of learning in addition to those owned or exclusively controlled by the State or any such county, city or town, and the Governor has issued an executive proclamation of such fact and of the result of said election; and

Whereas, it is now the duty of the General Assembly to provide plans for the election and convening of the dele-

gates to said convention and for its organization; now, therefore,

Be it enacted by the General Assembly of Virginia as follows:

1. # 1. Apportionment of delegates.—From the counties and cities of each senatorial district as now provided by law for the election of members to the Senate of the General Assembly of Virginia, there shall be elected by the qualified voters thereof delegates to the constitutional convention as follows:

First.—Accomack, Northampton, Princess Anne and Virginia Beach, one.

Second.—Norfolk City, two.

Third.—Norfolk County and South Norfolk, one.

Fourth.—Halifax, Charlotte, and Prince Edward, one.

Fifth.—Isle of Wight, Nansemond, Southampton and Suffolk, one.

Sixth.—Greensville, Hopewell, Prince George, Surry and Sussex, one.

Seventh.—Brunswick, Lunenburg, and Mecklenburg, one.

Eighth.—Dinwiddie, Nottoway and Petersburg, one.

Ninth.—Arlington, one.

Tenth.—Portsmouth, one.

Eleventh.—Appomattox, Buckingham, Cumberland, Powhatan, Amherst, Nelson and Amelia, one.

Twelfth.—Campbell and Lynchburg, one.

Thirteenth.—Danville, Henry, Martinsville, Patrick and Pittsylvania, two.

Fourteenth.—Carroll, Floyd, Galax and Grayson, one.

Fifteenth.—Bristol, Smyth and Washington, one.

Sixteenth.—Lee and Scott, one.

Seventeenth.—Dickenson, Norton and Wise, one.

Eighteenth.—Buchanan, Russell and Tazewell, one.

Nineteenth.—Bland, Giles, Pulaski and Wythe, one.

Twentieth.—Alleghany, Bedford, Botetourt, Buena Vista, Clifton Forge, Covington, Craig and Rockbridge, one.

Twenty-first.—Franklin, Montgomery, Radford and Roanoke County, one.

Twenty-second.—Augusta, Bath, Highland, Staunton and Waynesboro, one.

[fol. 626] Twenty-third.—Harrisonburg, Page, Rappahannock, Rockingham and Warren, one.

Twenty-fourth.—Clarke, Frederick, Shenandoah and Winchester, one.

Twenty-fifth.—Albemarle, Charlottesville, Fluvanna, Greene and Madison, one.

Twenty-sixth.—Fredericksburg, Goochland, Louisa, Orange and Spotsylvania, one.

Twenty-seventh.—Culpeper, Fauquier and Loudoun, one.

Twenty-eighth.—Fairfax and Falls Church, one.

Twenty-ninth.—King George, Lancaster, Northumberland, Prince William, Richmond County, Stafford and Westmoreland, one.

Thirtieth.—Caroline, Hanover, King William, Essex, King and Queen and Middlesex, one.

Thirty-first.—Gloucester, Mathews, Warwick, York, James City, New Kent and Williamsburg, one.

Thirty-second.—Hampton and Newport News, one.

Thirty-third.—Charles City, Chesterfield, Colonial Heights and Henrico, one.

Thirty-fourth.—Richmond City, three.

Thirty-fifth.—Roanoke City, one.

Thirty-sixth.—City of Alexandria, one.

2. The judges of election and other officers charged with the duty of conducting elections at each of the several voting places in the State are hereby required to hold an election for the election of said delegates to the convention on such date not later than thirty-five days after the effective date of this Act as shall be fixed by the Governor by executive proclamation and issuance of a writ of election, which said writ shall be published in the manner prescribed by # 24-138 of the Code. Said election shall be held and conducted in the manner prescribed by law for holding and conducting special elections. The persons entitled to vote in said election shall be the electors qualified to vote at a special election to fill vacancies for members of the General Assembly.

And provided, further, that the said election officials shall be paid out of the State treasury the per diem fixed by law for the holding of the election herein provided for, and an amount sufficient for such purpose is hereby appro-

priated therefor out of the general fund in the State treasury, the same to be paid by the State Treasurer into the several county and city treasuries, on the warrant of the Comptroller, upon the proper voucher, or vouchers, required by the Comptroller, approved by the chairmen of the several boards of supervisors and the several mayors of the cities.

3. The ballots used in said election shall conform as nearly as possible to ballots used in general elections for State Senators, and shall be prepared and distributed by the appropriate electoral boards. The several counties and cities shall pay the cost of printing said ballots.

4. The ballots shall be distributed and voted, and the results thereof ascertained and certified, in the manner prescribed in # 24-141 of the Code of Virginia. It shall be the duty of the clerks and commissioners of election of each county and city, respectively, to forthwith make out, certify and forward an abstract of the votes cast for the respective candidates in the manner now prescribed by law in relation to votes cast in general State elections for members of the State Senate. The provisions of # # 24-131 and 24-132 of the Code with respect to notice of candidacy and the printing of the name of a candidate on the ballot shall be applicable to the election of delegates to the convention; provided, that the clerks of the counties and cities shall, upon the expiration of the time for filing notice of candidacy, forthwith certify the name of each person filing a notice of candidacy under # 24-131 of the Code to the State Board of Elections and to the Electoral Board of his county or city. The State Board of Elections shall thereafter be governed by the applicable provisions of Chapter 13.1 of Title 24 of the Code.

5. It shall be the duty of the State Board of Elections, as soon as possible, to canvass the said abstracts of votes [fol. 627] cast, and state the number of votes cast at said election for the respective candidates, in the manner now prescribed by law in relation to votes cast in general elections for members of the State Senate. The State Board of Elections shall issue certificates to delegates elected to the convention similar to the certificates required by law

to be issued to members elected to the State Senate, and upon the day of the assembling of the convention shall lay before it a list of the delegates elected thereto with the districts they represent.

6. The persons who shall be elected in pursuance of this Act shall, on the fifth day of March, nineteen hundred fifty-six, at twelve o'clock noon, meet and assemble in the old hall of the House of Delegates at the Capitol, in the city of Richmond, in convention, to consider, discuss, adopt, proclaim, and ordain revisions and amendments in conformity with the provisions of Section one, sub-section A, of Chapter two of the Acts of the Extra Session of the General Assembly of nineteen hundred fifty-five.

7. The said convention shall be the judge of its own privileges and elections, and the members thereof shall have, possess, and enjoy, in the most full and ample manner all the privileges to which members elected to and attending the General Assembly are entitled; and moreover, shall be allowed the same mileage for traveling to and returning from said convention as is now allowed to members of the General Assembly, and shall receive for attendance upon said convention the sum of eighteen dollars per day, Sundays included.

8. The convention shall proclaim, in such manner as it deems appropriate, the said revisions and amendments adopted and ordained by it, and said revisions and amendments shall thereupon be and become a part of the Constitution of Virginia.

2. There is hereby appropriated for the purpose of defraying the compensation of the members and officers and employees appointed by the convention, and all other proper expenses thereof, a sufficient sum, to be paid by the Treasurer upon warrants of the Comptroller issued upon invoices signed by such officer as the convention may designate.

3. An emergency existing, this Act shall be in force from its passage.

PLAINTIFF'S EXHIBIT 8

COMMONWEALTH OF VIRGINIA
GENERAL ASSEMBLY

SENATE JOINT RESOLUTION No. 3

Interposing the sovereignty of Virginia against encroachment upon the reserved powers of this State, and appealing to sister states to resolve a question of contested power.

Be it resolved by the Senate of Virginia, the House of Delegates concurring,

That the General Assembly of Virginia expresses its firm resolution to maintain and to defend the Constitution of the United States, and the Constitution of this State, against every attempt, whether foreign or domestic, to undermine the dual structure of this Union, and to destroy those fundamental principles embodied in our basic law, by which the delegated powers of the Federal government and the reserved powers of the respective States have long been protected and assured;

That this Assembly explicitly declares that the powers of the Federal Government result solely from the compact to which the States are parties, and that the powers of the Federal Government, in all its branches and agencies, are limited by the terms of the instrument creating the compact, and by the plain sense and intention of its provisions;

That the terms of this basic compact, and its plain sense and intention, apparent upon the face of the instrument, are that the ratifying States, parties thereto, have agreed voluntarily to delegate certain of their sovereign powers, but only those sovereign powers specifically enumerated, to a Federal Government thus constituted; and that all powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people;

That this basic compact may be validly amended in one way, and in one way only, and that is by ratification of a proposed amendment by the legislatures of not fewer than three-fourths of the States, pursuant to Article V of the Constitution, and that the judicial power extended to the Supreme Court of the United States to "all cases in law and equity arising under this Constitution" vested no authority in the court in effect to amend the Constitution;

[fol. 629] That by its decision of May 17, 1954, in the school cases, the Supreme Court of the United States placed upon the Constitution an interpretation, having the effect of an amendment thereto, which interpretation Virginia emphatically disapproves;

That the State of Virginia did not agree, in ratifying the Fourteenth Amendment, nor did other States ratifying the Fourteenth Amendment agree, that the power to operate racially separate schools was to be prohibited to them thereby; and as evidence of such understanding of the terms of the amendment, and its plain sense and intention, the General Assembly of Virginia notes that the very Congress which proposed the Fourteenth Amendment for ratification established separate schools in the District of Columbia; further, the Assembly notes that in many instances, the same State Legislatures that ratified the Fourteenth Amendment also provided for systems of separate public schools; and still further, the Assembly notes that both State and Federal courts, without any exception, recognized and approved this clear understanding over a long period of years and held repeatedly that the power to operate such schools was, indeed, a power reserved to the States to exercise "without intervention of the Federal courts under the Federal Constitution"; the Assembly submits that it relied upon this understanding in establishing and developing, at great sacrifice on the part of the citizens of Virginia, a school system that would not have been so established and developed had the understanding been otherwise; and this Assembly submits that this legislative history and long judicial construction entitle it still to believe that the power to operate separate schools, provided only that such schools are substantially equal, is a

power reserved to this State until the power be prohibited to the States by clear amendment of the Constitution;

That with the Supreme Court's decision aforesaid and this resolution by the General Assembly of Virginia, a question of contested power has arisen: The court asserts, for its part, that the States did, in fact, in 1868, prohibit unto themselves, by means of the Fourteenth Amendment, the power to maintain racially separate public schools, which power certain of the States have exercised daily for more than 80 years; the State of Virginia, for her part, asserts that she has never surrendered such power;

That this declaration upon the part of the Supreme Court of the United States constitutes a deliberate, palpable, and dangerous attempt by the court itself to usurp the amendatory power that lies solely with not fewer than three-fourths of the States;

That the General Assembly of Virginia, mindful of the resolution it adopted on December 21, 1798, and cognizant of similar resolutions adopted on like occasions in other States, both North and South, again asserts this fundamental principle: That whenever the Federal Government attempts the deliberate, palpable, and dangerous exercise of powers not granted it, the States who are parties to the compact have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for preserving the authorities, rights and liberties appertaining to them;

That failure on the part of this State thus to assert her clearly reserved powers would be construed as tacit consent to the surrender thereof; and that such submissive acquiescence to palpable, deliberate and dangerous encroachment upon one power would in the end lead to the surrender of all powers, and inevitably to the obliteration of the sovereignty of the States, contrary to the sacred compact by which this Union of States was created;

That in times past, Virginia has remained silent—we have remained too long silent!—against interpretations and constructions placed upon the Constitution which seemed to many citizens of Virginia palpable encroach-

ments upon the reserved powers of the States and willful usurpations of powers never delegated to our Federal Government; we have watched with growing concern as the power delegated to the Congress to regulate commerce among the several States has been stretched into a power to control local enterprises remote from interstate commerce; we have witnessed with disquietude the advancing tendency to read into a power to lay taxes for the general welfare a power to confiscate the earnings of our people for purposes unrelated to the general welfare as we conceive it; we have been dismayed at judicial decrees permitting private property to be taken for uses that plainly are not public uses; we are disturbed at the effort now afoot to distort the power to provide for the common defense, by some Fabian alchemy, into a power to build local school-houses;

That Virginia, anxiously concerned at this massive expansion of central authority, nevertheless has reserved her right to interpose against the progress of these evils in the hope that time would ameliorate the transgressions; now, however, in a matter so gravely affecting this State's most vital public institutions, Virginia can remain silent no longer; Recognizing, as this Assembly does, the prospect of incalculable harm to the public schools of this State and the disruption of the education of her children, Virginia is in duty bound to interpose against these most serious consequences, and earnestly to challenge the usurped authority that would inflict them upon her citizens.

THEREFORE, the General Assembly of Virginia, appealing to our Creator as Virginia appealed to Him for Divine Guidance when on June 29, 1776, our people established a Free and Independent State, now appeals to her sister States for that decision which only they are qualified under [fol. 631] our mutual compact to make, and respectfully requests them to join her in taking appropriate steps, pursuant to Article V of the Constitution, by which an amendment, designed to settle the issue of contested power here asserted, may be proposed to all the States.

And be it finally resolved, that until the question here asserted by the State of Virginia be settled by clear Con-

stitutional amendment, we pledge our firm intention to take all appropriate measures honorably, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers, and to urge upon our sister States, whose authority over their own most cherished powers may next be imperiled, their prompt and deliberate efforts to check this and further encroachment by the Supreme Court, through judicial legislation, upon the reserved powers of the States.

The Governor is requested to transmit a copy of the foregoing resolution to the governing bodies of every county, city and town in this State; to the executive authority of each of the other States; to the clerk of the Senate and House of Representatives of the United States; to Virginia's representatives and Senators in the Congress, and to the President and the Supreme Court of the United States for their information.

February 1, 1956

Agreed to by the House of Delegates

E. GRIFFITH DODSON

Clerk House of Delegates

February 1, 1956

Agreed to by the Senate

E. R. COMBS

Clerk of the Senate

A TRUE COPY, TESTE:

E. GRIFFITH DODSON

Keeper of the Rolls of the State.

[fol. 632]

PLAINTIFF'S EXHIBIT 9

AN ORDINANCE

To ordain and proclaim as a revision and amendment of Section 141 of the Constitution of Virginia.

Be it ordained by the Constitutional Convention of Virginia convened and assembled pursuant to the provisions of Chapter 1 of the regular session of the General Assembly

of Virginia, approved January 19, 1956, that the following revision and amendment of Section one hundred forty-one (section 141) of the Constitution of Virginia be, and is hereby proclaimed, established, ordained and declared to be on and after the seventh day of March, nineteen hundred fifty-six, a permanent part of said Constitution of Virginia. Said revision and amendment of section one hundred forty-one is in the following words and figures:

ARTICLE IX

XXX

Sec. 141. State appropriations prohibited to schools or institutions of learning not owned or exclusively controlled by the State or some subdivision thereof; exceptions to rule.

No appropriation of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State or some political subdivision thereof; provided, first, that the General Assembly may, and the governing bodies of the several counties, cities and towns may, subject to such limitations as may be imposed by the General Assembly appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning, in addition to those owned or exclusively controlled by the State or any such county, city or town; second, that the General Assembly may appropriate funds to an agency, or to a school or institution of learning owned or controlled by an agency, created and established by two or more States under a joint agreement to which this State is a party for the purpose of providing educational facilities for the citizens of the several States joining in such agreement; third, that counties, cities, towns and districts may make appropriations to nonsectarian schools of manual, industrial or technical training and also to any school or institution of learning owned or exclusively controlled by such county, city, town or school district.

Be it further ordained that the said ordinance shall be enrolled in appropriate typewriting by the Secretary of this

Convention and signed by the President and attested by the Secretary of the Convention, and suitable space shall be provided for the signing of said ordinance by all members of the Convention who desire to sign the same.

The enrolled copy of the ordinance shall be certified by the Secretary of the Convention to the Governor for transmission to the General Assembly at the current session of the General Assembly, to be preserved by the Keeper of the Rolls of the State in the same manner as Acts of the General Assembly are preserved, and for publication in a newspaper of general circulation in the city of Richmond, Virginia.

Be it further ordained that copies of the revision and amendment hereby ordained or copies of this ordinance printed under the supervision of the Secretary of the Convention, and copies thereof certified by the Keeper of the Rolls of the State, shall be received as evidence by the courts of the Commonwealth, and the General Assembly may provide other methods of proof of such amendment to the Constitution.

So soon as this ordinance shall be enrolled, the same shall be signed by the President and attested by the Secretary of the Convention.

[fol. 634]

PLAINTIFF'S EXHIBIT 10
COMMONWEALTH OF VIRGINIA
GENERAL ASSEMBLY

HOUSE JOINT RESOLUTION No. 97

Declaring the public policy of Virginia as to the participation in certain athletic events of athletic teams of the public free schools.

Agreed to by the Senate of Virginia, March 10, 1956
Agreed to by the House of Delegates as amended,
March 10, 1956.

Whereas, the long established policy of this Commonwealth has been to provide for the separation of the races which has resulted in many benefits to both races; and

Whereas, this wise policy should be preserved by all legal means at our command to the end that the benefits of this policy may be perpetuated; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, that it is the public policy of Virginia that no athletic team of any public free school should engage in any athletic contest of any nature within the State of Virginia with another team on which persons of the white and colored race are members, nor should any such school schedule or permit any member of its student body to engage in any athletic contest within the State of Virginia with a person of the white and colored race while such student is a member of such student body.

A TRUE COPY, TESTE:

/s/ E. GRIFFITH DOBSON
Clerk of the House of Delegates and
Keeper of the Rolls of the State.
July 5, 1956

[fol. 635]

PLAINTIFF'S EXHIBIT 11
GENERAL ASSEMBLY
OF THE
COMMONWEALTH OF VIRGINIA

EXTRA SESSION 1956

ACTS OF ASSEMBLY RELATING TO EDUCATION

Richmond
Division of Purchase
and Printing
1956

[fol. 636]

CHAPTER 71

An Act to amend and reenact § 1 of Chapter 716 of the Acts of Assembly of 1956, approved March 31, 1956, relating to the appropriation of the public revenue for the two years ending, respectively, on the thirtieth day of June, 1957, and the thirtieth day of June, 1958, so as to provide that the sums appropriated in Items 133, 134, 137, 138 and 143 shall be for the maintenance of an efficient system of elementary and secondary schools, respectively; to establish and define an elementary and secondary public school system; to prohibit the expenditure of any of the funds appropriated by such items in support of any system of public schools which is not efficient; and to provide for and prescribe the conditions under which such funds may be expended for educational purposes in furtherance of education of Virginia students in elementary and secondary non-sectarian private schools.

[H 1]

Approved September 29, 1956

(Note—Complete text of amendments to Chapter 716, Acts of Assembly, Regular Session 1956)

Be it enacted by the General Assembly of Virginia:

1. That § 1 of Chapter 716 of the Acts of Assembly of 1956, approved March 31, 1956, be amended and reenacted as follows:

§ 1. The public taxes and arrears of taxes, as well as the revenue and money derived from all other sources, which shall come into the State treasury prior to the first day of July, nineteen hundred and fifty-eight, are hereby appropriated for the years to close on the thirtieth day of June, nineteen hundred and fifty-seven, and the thirtieth day of June, nineteen hundred and fifty-eight, respectively, as set forth in the following sections and items for the purposes stated. Such public taxes, arrears of taxes, revenues, and money derived from other sources as are not segregated by law to special funds shall establish the general fund of the State treasury. Except where otherwise provided in

this act, the sums appropriated are appropriated from the general fund of the State treasury.

[fol. 637]

BIENNIIUM 1956-1958

LEGISLATIVE DEPARTMENT OF THE
GOVERNMENT

GENERAL ASSEMBLY OF VIRGINIA

Item 1		
	First Year	Second Year
For legislating for the State, a sum sufficient, estimated at	\$ 74,206	\$ 339,896

Out of this appropriation shall be paid the salaries of members, clerks, assistant clerks, officers, pages and employees; the mileage of members, officers and employees, including salaries and mileage of members of legislative committees sitting during recess; and the incidental expenses of the General Assembly.

Out of this appropriation the following salaries shall be paid:

Clerk of the House of Delegates	\$12,000
Index Clerk, Deputy and Secretary to the Clerk of the House of Delegates	5,000
Clerk of the Senate	10,000
Senate Index Clerk, not exceeding	6,000
Secretary to the Clerk of the Senate	4,000

It is further provided that out of this appropriation there is hereby appropriated for payment of expenses of the Lieutenant-Governor, \$1,500 each year, to be paid in equal monthly installments of \$125.00 each.

AUDITING COMMITTEE OF THE GENERAL ASSEMBLY

<i>Item 2</i>	<i>First Year</i>	<i>Second Year</i>
For auditing public accounts	\$ 585	\$ 585

DIVISION OF STATUTORY RESEARCH AND DRAFTING

<i>Item 3</i>		
For assistance in preparing legislation	\$ 37,415	\$ 53,950
Out of this appropriation the following salary shall be paid:		
Director	\$11,000	

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

<i>Item 4</i>		
For study and advice on legislative matters	\$ 21,260	\$ 23,260

VIRGINIA CODE COMMISSION

<i>Item 5</i>		
For carrying out the duties prescribed by §§ 9-66 through 9-68, inclusive, of the Code of Virginia, pertaining to the codification and printing of acts of the General Assembly in code form	\$ 2,500	\$ 17,400

VIRGINIA COMMISSION ON INTERSTATE COOPERATION

<i>Item 6</i>		
For promoting interstate cooperation	\$ 10,375	\$ 10,375

COMMISSION ON VETERANS' AFFAIRS

<i>Item 7</i>		
For making investigations and recommendations concerning appropriate legislation for the benefit of Virginia war veterans and their dependents	\$ 500	\$ 500

Total for Legislative Department of the Government

\$ 146,841 \$ 445,966

[fol. 638]

JUDICIAL DEPARTMENT OF THE GOVERNMENT

SUPREME COURT OF APPEALS

<i>Item 8</i>	<i>First Year</i>	<i>Second Year</i>
For adjudication of legal cases	\$ 196,012	\$ 199,212

Out of this appropriation the following salaries and wages shall be paid:

Chief Justice	\$16,000
Associate Justices (6), at \$15,500 each	93,000

It is further provided that out of this appropriation shall be paid the traveling and other expenses of the Justices of the Supreme Court of Appeals, one thousand five hundred dollars for each Justice, which sum shall be in lieu of mileage.

<i>Item 9</i>		
For printing records of litigation, a sum sufficient, estimated at	\$ 30,000	\$ 30,000

<i>Item 10</i>		
For maintenance of law library	\$ 23,516	\$ 23,316

<i>Item 11</i>		
For office of executive secretary of the Supreme Court of Appeals, the salaries of such employees to be fixed by the Supreme Court; provided that the salary of such executive secretary shall not exceed the amount allowed by law to a judge of a trial court of record	\$ 18,000	\$ 18,000

Total for the Supreme Court of Appeals

\$ 267,528 \$ 270,528

RETIREMENT OF JUSTICES AND JUDGES

<i>Item 12</i>	<i>First Year</i>	<i>Second Year</i>
For retirement pay of Justices of the Supreme Court of Appeals, and Judges of Circuit, Corporation and Hustings, and City Courts, and expenses of retired Justices and Judges when recalled to active duty, in accordance with law, a sum sufficient, estimated at	\$ 44,190	\$ 44,190

CIRCUIT COURTS

<i>Item 13</i>		
For adjudication of legal cases	\$ 430,512	\$ 430,512
Out of this appropriation shall be paid the following salaries only:		
Judges (37), at \$10,700 each ..	\$395,900	
Additional salaries	3,112	
Judge 29th Circuit	10,700	
Compensation to sheriffs, sergeants and their deputies for attendance upon the circuit courts, as authorized by § 14-85 of the Code of Virginia	1,500	

CORPORATION AND HUSTINGS COURTS

<i>Item 14</i>		
For adjudication of legal cases	\$ 184,020	\$ 184,020
Out of this appropriation shall be paid the following salaries only:		
Judges (17), at \$10,700 each ..	\$181,900	
Judge of the Corporation Court, City of Winchester ..	1,120	
Clerk at Richmond	1,000	

[fol. 639]

CITY COURTS

<i>Item 15</i>	<i>First Year</i>	<i>Second Year</i>
For adjudication of legal cases	\$ 70,700	\$ 70,700
Out of this appropriation shall be paid the following salaries and wages only:		
Judges (6), at \$10,700 each ..	\$64,200	
Compensation to sheriffs, sergeants and their deputies, for attendance upon city courts, as authorized by § 14-85 of the Code of Virginia	6,500	

VIRGINIA STATE BAR

<i>Item 16</i>		
For administration of the integrated bar act, to be paid only out of revenues collected and paid into the State treasury in accordance with the provisions of said act and not out of the general fund of the State treasury	\$33,382	
for the first year and \$33,582 the second year.		

JUDICIAL COUNCIL

<i>Item 17</i>		
For the expenses of the Judicial Council authorized by §§ 17-222 to 17-227, inclusive, of the Code of Virginia, and for the expenses of the Judicial Conference	\$ 5,500	\$ 5,500

DEPARTMENT OF LAW

ATTORNEY GENERAL

<i>Item 18</i>		
For providing legal services for the State ..	\$ 139,350	\$ 144,750
Out of this appropriation the following salary shall be paid:		
Attorney General	\$14,850	

It is provided that all attorneys authorized by this act to be employed by any department or agency, and all attorneys compensated out of any monies appropriated by this session of the General Assembly, shall be appointed by the Attorney General and be in all respects subject to the provisions of §§ 2-85 to 2-93, inclusive, §§ 2-94 to 2-97, inclusive, and § 14-14 of the Code of Virginia.

DIVISION OF MOTION PICTURE CENSORSHIP

Item 19

	<i>First Year</i>	<i>Second Year</i>
For examining and licensing motion picture films publicly exhibited in Virginia	\$ 54,915	\$ 55,960

DIVISION OF WAR VETERANS' CLAIMS

Item 20

For preparation and prosecution of claims against the United States Veterans' Administration and other agencies on behalf of war veterans and their dependents and the surviving dependents of deceased war veterans, in accordance with the provisions of § 2-93.1 of the Code of Virginia	\$ 217,046	\$ 219,129
---	------------	------------

COMMISSIONERS FOR THE PROMOTION OF UNIFORMITY OF LEGISLATION IN THE UNITED STATES

Item 21

For promoting uniformity of legislation	\$ 1,250	\$ 1,250
 Total for the Department of Law	 \$ 412,561	 \$ 421,089
 Total for the Judicial Department of the Government	 \$ 1,415,011	 \$ 1,426,539

[fol. 640]

EXECUTIVE DEPARTMENT OF THE GOVERNMENT

GOVERNOR

	<i>First Year</i>	<i>Second Year</i>
<i>Item 22</i> For executive control of the State	\$ 91,252	\$ 95,460
Out of this appropriation the following salaries shall be paid:		
Governor	\$17,500	
Secretary of the Commonwealth and ex-officio secretary to the Governor	6,500	
It is provided, however, that on and after the beginning of the term of the Governor of Virginia taking office in January, 1958, the salary of the Governor shall be \$20,000 per annum and the salary of the Secretary of the Commonwealth and ex-officio secretary to the Governor shall be \$7,000 per annum.		
<i>Item 23</i> For a discretionary fund, to be expended by the Governor for such objects or purposes, including reorganization studies of State agencies, as the Governor, in his discretion, may deem proper to meet any contingencies or conditions which may arise from time to time	\$ 130,000	\$ 120,000
<i>Item 24</i> To be expended by the Governor pursuant to the provisions of § 15-891.3 of the Code of Virginia for regional planning commissions heretofore established	\$ 20,000	\$ 20,000
<i>Item 25</i> For payment of Virginia's quota of the expenses of administrative services and operations of the Board of Control for Southern Regional Education	\$ 28,000	\$ 28,000

	<i>First Year</i>	<i>Second Year</i>
<i>Item 26</i>		
For operation and maintenance of the Governor's Mansion	\$ 24,941	\$ 25,441
<i>Item 27</i>		
For carrying out the purposes of, and subject to the conditions stated in, Chapter 22, Acts of Assembly of 1950, which authorizes the Governor to take certain steps in event of a coal production emergency, there is hereby appropriated from the general fund of the State treasury a sum sufficient.		
Total for the Governor	\$ 294,193	\$ 288,901

STATE BOARD OF ELECTIONS

<i>Item 28</i>		
For supervising and coordinating the conduct of elections	\$ 43,800	\$ 33,600
Out of this appropriation shall be paid the following salary:		
Secretary	\$7,950	

STATE AND LOCAL DEFENSE

<i>Item 29</i>		
For promotion and coordination of State and local civil defense activities, a sum sufficient estimated at	\$ 87,300	\$ 88,050
It is hereby provided that this appropriation shall be expended on warrants of the Comptroller, issued upon vouchers signed by the Governor, or by such other person or persons as may be designated by him for the purpose.		

[fol. 641]

DIVISION OF THE BUDGET

	<i>First Year</i>	<i>Second Year</i>
<i>Item 30</i>		
For preparation and administration of the executive budget	\$ 38,922	\$ 74,458
Out of this appropriation the following salary shall be paid:		
Director	\$12,000	
<i>Item 31</i>		
For institutional engineering	\$ 186,460	\$ 190,270
<i>Item 32</i>		
For records management	\$ 37,790	\$ 35,660
It is provided that the special revenues collected for records management services shall be paid into the general fund of the State treasury.		
<i>Item 33</i>		
For maintenance and operation of grounds and buildings	\$ 591,807	\$ 645,362
It is hereby provided that no part of this appropriation for maintenance and operation of grounds and buildings shall be used to furnish floor coverings, electric fans or other office equipment to any State officer, department, board, institution or other State agency.		
It is provided, further, that a pro rata share of the costs of operating a central telephone system shall be charged to each State department and agency in Richmond served by the system; payments for such charges shall be credited against the expenses of the Section of Grounds and Buildings of the Division of the Budget for the operation of the system.		
Out of this appropriation shall be paid a sum sufficient, not more than \$20,000		

each year, for the maintenance and operation of the Virginia World War II Memorial.

Item 34

For aiding in the production of motion picture films depicting activities of the State government

	<i>First Year</i>	<i>Second Year</i>
	2,500	2,500

Total for the Division of the Budget ..\$ 857,479 \$ 948,250

DIVISION OF PERSONNEL

Item 35

For administration of the Virginia Personnel Act

94,400 \$ 96,095

Out of this appropriation the following salary shall be paid:

Director\$9,900

Item 36

For administration of the Merit System Council, to be paid only out of funds to be transferred to the Merit System Council by order of the Governor from the appropriations herein made to the Unemployment Compensation Commission, Department of Welfare and Institutions, the State Board of Health, State Hospital Board, and the Virginia Commission for the Blind\$30,970 the first year, and \$32,070 the second year.

The Governor is hereby authorized to transfer to the Merit System Council from the respective appropriations herein made to the Unemployment Compensation Commission, the Department of Welfare and Institutions, the State Board of Health, the State Hospital

*First
Year* *Second
Year*

[fol. 642]

Board, and the Virginia Commission for the Visually Handicapped, a sum equal to the value of the services rendered by the Merit System Council for the respective agencies.

It is hereby provided that this appropriation shall be expended on warrants of the Comptroller, issued upon vouchers signed by the Director of the Division of Personnel or by such other person or persons as may be designated by the Governor for that purpose.

VIRGINIA SUPPLEMENTAL RETIREMENT SYSTEM

Item 37

For expenses of administration of the Board of Trustees of the Virginia Supplemental Retirement System

\$ 91,335 \$ 92,155

As used in Items 38 through 48, inclusive, the term "Social Security" has reference to the Federal Insurance Contributions Act with respect to contributions and to the Federal Old-Age and Survivors Insurance System with respect to employee benefits.

Item 38

For the State employer's Social Security payment, on behalf of State employees excepting those paid from special funds, to the Contribution Fund, pursuant to Chapter 3.1, Title 51, Code of Virginia, a sum sufficient estimated at

\$ 1,052,980 \$ 1,105,625

Item 39

For reimbursement to each local school board of the actual employer's Social Security payments made by it, on behalf

of teachers, to the Contribution Fund pursuant to Chapter 3.1, Title 51, Code of Virginia, a sum sufficient, estimated at

	<i>First Year</i>	<i>Second Year</i>
	\$ 1,985,460	\$ 2,084,735

Item 40

For reimbursement to each political subdivision the pro-rata share of the actual employer's Social Security payments made by it, on behalf of local special employees, to the Contribution Fund, pursuant to Chapter 3.1, Title 51, Code of Virginia; such pro rata share shall bear the same relationship to the total employer's payment for such special employees as the State's share of the special employee salaries, or the State's share of any excess fees from the special employee's office, bears or would bear to the total of such salaries or excess fees, respectively, a sum sufficient, estimated at

	\$ 87,000	\$ 91,300
--	-----------	-----------

Item 41

In the event any political subdivision required pursuant to Chapter 3.1, Title 51, Code of Virginia, and by any agreement pursuant to the cited act, to make payments to the Contribution Fund, fails to make such payments as are duly prescribed, either from its local employees or on behalf of its employer's contribution, the Board of Trustees of the Virginia Supplemental Retirement System shall inform the Comptroller of the delinquent amount and political subdivision. The Comptroller shall forthwith transfer such amount to the Contribution Fund from any non-earmarked

monies otherwise distributable to such subdivision by any department or agency of the State; provided that if the Comptroller reports to the Board of Trustees that, by law, no such amounts

[fol. 643]

are distributable to a specified political subdivision, the Board shall require such subdivision to post bond or securities in an amount sufficient to protect the State against loss from failure by such subdivision to pay any amounts required under the act providing Social Security coverage.

Item 42

To provide for the payment of increased retirement compensation to certain retired State employees and beneficiaries thereof, in accordance with the provisions of Chapter 404, Acts of Assembly of 1954, there is hereby appropriated out of the general fund of the treasury to Trust Fund B, established by § 51-111.68, Code of Virginia

	\$ 21,210	\$ 20,440
--	-----------	-----------

Item 43

To provide for the payment of increased retirement compensation to certain retired teachers and beneficiaries thereof, in accordance with the provisions of Chapter 404, Acts of Assembly of 1954, there is hereby appropriated out of the general fund of the treasury to Trust Fund B, established by § 51-111.68, Code of Virginia

	\$ 360,090	\$ 352,340
--	------------	------------

Item 44

For the State contribution, on behalf of State employees excepting those paid

	<i>First Year</i>	<i>Second Year</i>
from special funds, to the retirement allowance account as provided by Chapter 3.2, Title 51, of the Code of Virginia	\$ 1,038,110	\$ 1,084,015

Item 45

For the State contribution, on behalf of teachers, to the retirement allowance account as provided by Chapter 3.2, Title 51, of the Code of Virginia	\$ 2,941,285	\$ 3,159,550
--	--------------	--------------

Item 46

For the State contribution, on behalf of teachers, to the retirement allowance account as provided by Chapter 3.2, Title 51, of the Code of Virginia, to be paid from the principal of the literary fund in excess of \$10,000,000, the sum of\$1,465,000 each year.

Item 47

On July 1, 1956, and on July 1, 1957, the Comptroller shall transfer, from each special fund in the State treasury out of which any State employees are paid, to the retirement allowance account provided in Chapter 3.2, Title 51, Code of Virginia, and to the Contribution Fund as provided in Chapter 3.1, Title 51, Code of Virginia, and to the retirement allowance account as provided for State Police Officers by the Acts of Assembly of 1954, such amount as shall be estimated to have accrued and to accrue on account of salaries and wages for the quarter preceding and the three quarters following. At the close of each fiscal year the Comptroller shall adjust such transfers, if necessary, for each special fund in accord with actual ac-

	<i>First Year</i>	<i>Second Year</i>
cruals for retirement and Social Security purposes, during the four quarters concerned. The estimate of accruals and the subsequent report of actual accruals shall be supplied by the Board of Trustees of the Virginia Supplemental Retirement System to the Comptroller and shall be used by him in making the transfers required by this item.		

Item 48

For payment to the Secretary of the Treasury of the United States to the credit of such account as may be designated in accordance with the agreement entered into under Chapter 3.1, Title 51, Code of Virginia, for the purposes stated in the cited act, and in such amounts as may be specified pursuant to the cited agreement, there is hereby appropriated from the Contribution Fund established by the cited act, a sum sufficient.

Total for Virginia Supplemental Retirement System	\$ 7,572,470	\$ 7,990,160
---	--------------	--------------

ART COMMISSION

Item 49

For appraising works of art and structures	\$ 1,000	\$ 1,000
--	----------	----------

AUDITOR OF PUBLIC ACCOUNTS

	<i>First Year</i>	<i>Second Year</i>
<i>Item 50</i>		
For auditing the accounts of the State and local government units	\$ 432,625	\$ 441,075
Out of this appropriation the following salary shall be paid:		
Auditor of Public Accounts	\$11,000	
the first year and \$11,000 the second year.		

STATE COMMISSION ON LOCAL DEBT

<i>Item 51</i>		
For aiding localities in the flotation of new bonded debt	\$ 2,500	\$ 2,500

DEPARTMENT OF THE TREASURY

<i>Item 52</i>		
For the custody and disbursement of State money	\$ 105,030	\$ 110,655
Out of this appropriation the following salary shall be paid:		
State Treasurer	\$9,500	
the first year and \$9,730 the second year.		

It is provided that out of this appropriation shall be paid the premiums on the official bonds of the State Treasurer and employees of the Department of the Treasury, and the premiums on insurance policies on vault in the Department of the Treasury and on messenger insurance policy.

It is further provided that out of this appropriation the State Treasurer shall be paid as compensation for services rendered as Chairman of the Investment Committee of the Virginia Supplemental Retirement System the sum of \$500 dur-

ing the year ending June 30, 1957, and the sum of \$270 during the year ending June 30, 1958.

On and after the beginning of the term of the State Treasurer in January 1958, the annual salary of the State Treasurer shall be \$11,000 per annum, which shall include compensation for services rendered as Chairman of the Investment Committee of the Virginia Supplemental Retirement System.
[fol. 645]

TREASURY BOND

<i>Item 53</i>		
For payment of interest on the State debt	\$ 350,121	\$ 350,121
<i>Item 54</i>		
For providing sinking fund for redemption of Riddleberger bonds, Century bonds and general fund bonded indebtedness	\$ 514,879	\$ 514,879
Total for Treasury Board	\$ 865,000	\$ 865,000

DEPARTMENT OF ACCOUNTS AND PURCHASES

DIVISION OF ACCOUNTS AND CONTROL

<i>Item 55</i>		
For auditing and recording the financial transactions of the State	\$ 309,200	\$ 308,800
Out of this appropriation the following salary shall be paid:		
Comptroller	\$11,000	
Out of this appropriation shall be paid the costs of the official bonds of the Comptroller; and the costs of the surety		

bonds of the employees in the Division of Accounts and Control, in accordance with the provisions of §§ 2-7 and 2-8 of the Code of Virginia.

Item 56

For collecting old claims, as authorized by § 2-270 of the Code of Virginia, and for adjustment of State litigation, a sum sufficient, estimated at -----\$

<i>First Year</i>	<i>Second Year</i>
2,500	\$ 2,500

Out of this appropriation shall be paid the costs of civil prosecution in civil cases, expenses and commissions in collecting old debts, etc., in accordance with § 8-780 of the Code of Virginia.

Item 57

For support of lunatics in jails and in charge of private persons, a sum sufficient, estimated at -----\$

2,000	\$ 2,000
-------	----------

Item 58

For payment of pensions, funeral expenses, relief of Confederate women and administrative expenses -----\$

366,575	\$ 348,695
---------	------------

Out of this appropriation each pensioner in the several classes now on the pension roster, or hereafter placed on the pension roster, under the regular pension act (as continued in effect by § 51-1 of the Code of Virginia) approved March 26, 1928, chapter 465, as amended March 24, 1930, and March 30, 1934 and subsequent acts appropriating the public revenue, shall be paid as follows: to Confederate veterans, \$1,200 a year; to each widow of a Confederate soldier, sailor or marine, \$600 a year; and for the funeral expenses of each deceased

<i>First Year</i>	<i>Second Year</i>
-----------------------	------------------------

pensioner, to be paid to the personal representative of such deceased pensioner or, without qualification of a personal representative, to the undertaker, upon submission to the Comptroller of certificates and affidavits required by law, \$45; provided, however, that the said allowance for the funeral expenses of each Confederate veteran who was on the pension roster at the time of his death shall be \$100; provided, further, that under the provisions of this act any person who actually accompanied a

[fol. 646]

soldier in the service and remained faithful and loyal as the body servant of such soldier or who served as cook, hostler or teamster, or who worked on breastworks under any command of the army and thereby rendered service to the Confederacy, shall be entitled to receive an annual pension of \$240, proof of service to be prescribed by the Comptroller; provided that to each widow of a Confederate soldier as above set out who is now or who may become an inmate of an institution receiving support from the State and who was married prior to October 1, 1880, and has not remarried, shall be paid the sum of \$25.00 per month; and to each such widow who was married on or after October 1, 1880, and prior to January 1, 1921, and who has not remarried and to each such widow who married on or after January 1, 1921, who is over 75 years of age and who has not remarried, shall be paid the sum of \$20.00 per month.

<i>First Year</i>	<i>Second Year</i>
-----------------------	------------------------

Any unexpended portion of this appropriation shall revert to the general fund of the State treasury, and no part thereof shall be prorated among pensioners.

It is further provided that out of the appropriation for public printing the Director of the Division of Purchase and Printing shall supply all forms and have done and pay for all printing, binding, ruling, etc. required by the Comptroller in pension matters and in connection with the payment of pensions. The Comptroller shall pay monthly at such dates as he may prescribe the pensions authorized by this act.

It is further provided that out of this appropriation of \$366,575 for the first year and \$348,695 for the second year, there shall be expended for relief of needy Confederate women of Virginia including daughters of Confederate soldiers who are now widows, born not later than December 31, 1883, who are not upon the State pension roster, and who are not inmates of any Confederate, independent or church home or charitable institution, in accordance with the provisions of the act approved March 10, 1914 (Acts of Assembly, 1914, chapter 56, page 81); provided that each such needy Confederate woman shall receive \$90.00 per year\$119,250 each year.

It is further provided that out of this appropriation, there shall be expended for care of needy Confederate women who are inmates of the Home for Needy Confederate Women at Richmond, in

<i>First Year</i>	<i>Second Year</i>
-----------------------	------------------------

accordance with the provisions of the act approved March 4, 1914 (Acts of Assembly, 1914, chapter 40, page 60)\$65,000 each year.

It is provided, however, that no part of this appropriation shall be available for expenditure until satisfactory evidence of compliance with the following conditions has been presented the Auditor of Public Accounts:

(1) Copies of all current and future applications for admission to the Home have been or will be filed with the Auditor of Public Accounts. (2) Proof that admissions to the Home are being made as far as practicable on the basis of first come first served, [fol. 647]

provided that where the governing board of the Home deviates from the policy of first come first served the reasons therefor shall be filed with the Auditor of Public Accounts, it being understood that such board shall have the right to deviate from such policy in cases which are considered by the board to be of dire necessity or distress. (3) Upon the admission of any guest to the Home the Auditor of Public Accounts shall be informed thereof and also as to the length of time which the application has been pending; and whether it has been given priority over other applications. (4) Copies of the rules of admission have been filed with the Auditor of Public Accounts. (5) No part of this appropriation shall be available di-

rectly or indirectly for the care or maintenance of any person who is not a member of the class for which the Home was originally established.

The governing body of the Home may refuse to admit anyone sick of an incurable disease or who is bedridden or who is an addict to narcotics or to the use of intoxicating liquors or who is mentally affected to the extent of materially affecting the comfort of the other inmates.

Item 59

For assessing property for taxation and collecting and distributing records of assessments, a sum sufficient, estimated at\$ 1,296,650 \$ 1,296,650

Out of this appropriation shall be paid compensation and expenses of office of city and county commissioners of the revenue, as authorized by § 14-77 of the Code of Virginia, after certification by the chairman of the Compensation Board to the State Comptroller of the amounts of the salaries and expense allowances of such officers fixed and ascertained by said board, and commissions to examiners of records, the postal and express charges on land and property, books, etc.

Item 60

For collecting State taxes a sum sufficient, estimated at\$ 1,605,000 \$ 1,605,000

Out of this appropriation shall be paid to county and city treasurers the compensation and expenses of office authorized by § 14-77 of the Code of Virginia, but only after certification by the chair-

<i>First Year</i>	<i>Second Year</i>
-----------------------	------------------------

<i>First Year</i>	<i>Second Year</i>
-----------------------	------------------------

man of the Compensation Board to the State Comptroller of the amounts of the salaries, if any, and expense allowances of such officers, fixed and ascertained by said board; and to county and city clerks of courts, the commissions to which they are entitled by law for the collection of State taxes.

Item 61

For premiums on official bonds of county and city treasurers, as required by § 15-480 of the Code of Virginia, a sum sufficient, estimated at\$ 60,000 \$ 20,000

Item 62

For reissue of old warrants, previously charged off, a sum sufficient, estimated at\$ 20,000 \$ 20,000

Item 63

For per diem and expenses of presidential electors\$ 500
[fol. 648]

Item 64

For criminal charges, a sum sufficient, estimated at\$ 4,500,000 \$ 4,500,000

Out of this appropriation shall be paid the costs incident to the arrest and prosecution of persons charged with the violation of State laws, including salaries of attorneys for the Commonwealth, as provided by § 14-77 of the Code of Virginia, expenses of juries, witnesses, etc., but where a witness attends in two or more cases on the same day, only one fee shall be allowed such witness; the transportation costs of children committed to the State Board of Welfare and Institutions, and compensation at

the rate of nine dollars a day to each agent of the State Board of Welfare and Institutions for each day such agent is engaged in transporting children committed to the Board to homes, institutions, training schools or other locations; the necessary traveling expenses incurred by these agents in carrying out their duties as agents of the Board; and the transportation cost of the State Prison Farm for Defective Misdemeanants, as provided by law, cost of maintenance in local jails of persons charged with violation of State laws, including food, clothing, medicine, medical attention, guarding, etc.; provided, however, that all jail physicians be paid at the rate provided by law, but not more than five hundred dollars per calendar year shall be paid the jail physician or physicians for any city or county, the population of which is less than 100,000, and not more than one thousand dollars per calendar year shall be paid the jail physician of physicians of any city or county, the population of which is 100,000 or over, and coroner's fees, etc., said compensation for jail physician to be paid at the end of the calendar year; provided, however, that in case of death or resignation his compensation shall be pro-rated on the basis of time of service bears to the full calendar year. Provided, no deduction or cut shall be made in reimbursing any city sergeant or sheriff the actual cost of supplies purchased by him under authority of law, and provided, further, that no salaries, fees or expenses shall be paid to any

*First
Year*

*Second
Year*

*First
Year*

*Second
Year*

officers out of this appropriation in cases where the Compensation Board is required to fix and ascertain same or any part thereof, until after certification by the chairman of the Compensation Board to the State Comptroller of the amounts of the salaries, if any, and expense allowances of such officers, fixed and ascertained by said board.

Out of this appropriation shall be paid the State's share of the salaries and expenses of sheriffs and sergeants and their deputies in accordance with law.

It is further provided that out of this appropriation shall be paid the expenses necessarily incurred on official business by judges of circuit, city, and corporation and hustings courts, for postage, stationery, and clerk hire, not exceeding \$300 a year for each judge.

Out of this appropriation shall be paid not exceeding \$120,000 each year of the biennium for reimbursing counties and cities under the provisions of § 16-172.67, § 16-172.68, § 16-172.13, and § 16-172.16 of the Code of Virginia; provided that no part of this appropriation shall be paid to any county or city which ex-

[fol. 649]

pends in any year following the fiscal year ending June 30, 1954, less than it spent in such fiscal year for the purposes for which reimbursement is provided and authorized; provided further than such amounts as have been paid from the appropriation for criminal charges in the fiscal year ending June 30, 1954, in reimbursing counties and cities under any of the sections hereinbefore referred

<i>First Year</i>	<i>Second Year</i>
-----------------------	------------------------

to or such amounts as would be payable under such sections prior to the amendments at the 1946 session of the General Assembly, shall not be charged against the payments authorized to be made under this paragraph.

Out of this appropriation shall be paid the actual expenses of the committee of circuit court judges, as provided by § 14-50 of the Code of Virginia.

It is provided, however, that no part of this appropriation shall be used for the payment of criminal charges incident to prisoners employed on the State Convict Road Force or at the State Industrial Farm for Women, or at the State Penitentiary Farm and State Prison Farm for Defective Misdemeanants.

Item 65

For apportionment to counties which have withdrawn from the provisions of Article 4, as amended, of Chapter 1 of Title 33 of the Code of Virginia, of the proceeds of the motor vehicle fuel tax to which such counties are entitled by law, a sum sufficient.

Item 66-A

For payment to counties and cities of their distributive share of the proceeds of the tax levied upon certain alcoholic beverages by § 4-24 of the Code of Virginia, a sum sufficient.

Item 66-B

There is hereby appropriated to the cities, incorporated towns, and counties of the State two-thirds of the net profits derived under the provisions of § 4-22

<i>First Year</i>	<i>Second Year</i>
-----------------------	------------------------

of the Code of Virginia, in excess of seven hundred fifty thousand dollars, each city, incorporated town, and county to receive an amount apportioned on the basis of their respective populations according to the last preceding United States census. It is intended that this item shall provide for the payment to cities, incorporated towns, and counties of only so much of the amounts they would normally receive under the provisions of § 4-22 of the Code of Virginia, as is embraced in the distribution of two-thirds of the said net profits, in excess of seven hundred fifty thousand dollars, but that, by reason of other appropriations made out of the general fund of the treasury for the benefit of said cities, incorporated towns, and counties, there shall be no distribution of any of said net profits except two-thirds thereof, as provided in § 4-22 of the Code of Virginia. In order to be able to ascertain and determine properly the actual amount of said profits the Comptroller may, from time to time, credit on his books to the said board the value of merchandise on hand in the warehouses and stores of the board at the actual cost thereof to the said board.

Total for Division of Accounts and Control	\$ 8,162,425	\$ 8,103,645
--	--------------	--------------

[fol. 650]、

DIVISION OF PURCHASE AND PRINTING

Item 67

For purchasing commodities and supervising public printing for the State	\$ 225,815	\$ 308,085
--	------------	------------

Out of this appropriation shall be paid only the cost of such public printing required for the work of departments, institutions and agencies of the State government as is authorized by law to be paid out of the public printing fund, including the cost of printing and binding the Virginia Reports\$27,500 the first year and \$105,000 the second year.

It is hereby provided that no part of this appropriation for the Division of Purchase and Printing shall be expended in furnishing stationery or other office supplies to any State officer, department, board, institution or other State agency.

COMPENSATION BOARD

Item 68

For regulating compensation of local officers, in accordance with law\$ 30,235 \$ 30,685

Out of this appropriation the following salary may be paid:

Chairman, not exceeding\$5,000

It is provided, however, that for such time, if any, as the Chairman of the Compensation Board receives additional pay for other services rendered the State, his salary as such Chairman shall not exceed \$3,505; but on and after the beginning of the term of the Governor taking office in January, 1958, such salary shall be \$2,505; and such salary shall be included as creditable compensation under Chapter 3.2, Title 51 of the Code of Virginia.

<i>First Year</i>	<i>Second Year</i>
-----------------------	------------------------

DEPARTMENT OF TAXATION

	<i>First Year</i>	<i>Second Year</i>
<i>Item 69</i>		
For administration of the tax laws, the Virginia Unfair Sales Act, and aiding in general assessment or reassessment of real estate	\$ 1,028,425	\$ 1,058,560
Out of this appropriation shall be paid the following salary:		
State Tax Commissioner	\$14,850	

DIVISION OF MOTOR VEHICLES

Item 70

For administration of motor vehicle license, registration and fuel tax laws\$1,233,520
the first year, and \$1,257,870 the second year.

Out of this appropriation the following salary shall be paid:

Commissioner\$11,000

Item 70-A

For furnishing localities with lists of all registered automotive equipment within their respective jurisdictions\$25,000 each year.

[fol. 651]

Item 71

For refund of taxes on motor vehicle fuels in accordance with law, a sum sufficient.

Item 72

For licensing operators of motor vehicles\$383,100
the first year, and \$376,780 the second year.

	<i>First Year</i>	<i>Second Year</i>
<i>Item 73</i>		
For promoting safety in the operation of motor vehicles\$437,600		
the first year, and \$443,750 the second year.		
<i>Item 74</i>		
For receiving application for the registration of titles to motor vehicles and for issuance of licenses in accordance with law, at branch offices, a sum sufficient, estimated at\$433,980		
the first year and \$441,300 the second year.		
<i>Item 75</i>		
For maintenance and operation of building occupied by Division of Motor Vehicles\$74,690		
the first year and \$75,240 the second year.		
<i>Item 76</i>		
For regulating the distribution and sales of motor vehicles\$71,200		
the first year, and \$71,820 the second year.		
<i>Item 77</i>		
For administration of the use fuel tax act of 1940\$39,040		
the first year, and \$39,450 the second year.		
<i>Item 78</i>		
For examining applicants for operators' and chauffeurs' licenses\$302,440		
the first year, and \$306,650 the second year.		

	<i>First Year</i>	<i>Second Year</i>
<i>Item 79</i>		
All appropriations herein made to the Division of Motor Vehicles shall be paid only out of revenues collected and paid into the State treasury by the Division of Motor Vehicles and credited to the State highway maintenance and construction fund, and none of the appropriations made to the said division shall be paid out of the general fund of the State treasury, provided further, however, that no expenditures out of these appropriations shall be paid out of the revenue derived from the taxes levied under §§ 58-623, 58-711, and 58-744 of the Code of Virginia, as amended.		
<i>Item 80</i>		
All revenue received by the Division of Motor Vehicles for any purpose whatsoever or in accordance with any law or regulation administered by said division shall be paid directly and promptly into the State treasury to the credit of the State highway maintenance and construction fund.		
Total for the Division of Motor Vehicles from special funds\$3,000,570		
the first year, and \$3,037,860 the second year.		
[fol. 652]		
DEPARTMENT OF STATE POLICE		
<i>Item 81</i>		
For State police patrol\$4,495,220		
the first year, and \$4,715,500 the second year.		
Out of this appropriation the following salary shall be paid:		
Superintendent of State Police\$11,000		

	<i>First Year</i>	<i>Second Year</i>
<i>Item 82</i>		
For promoting highway safety\$174,750 the first year, and \$168,380 the second year.		
<i>Item 83</i>		
For operation of State Police Radio System\$507,940 the first year, and \$515,140 the second year.		
<i>Item 84</i>		
For operation and maintenance of headquarters buildings and grounds\$94,350 the first year, and \$97,720 the second year.		
<i>Item 85</i>		
For operation of State Police Din- ing Room\$43,615 the first year, and \$43,760 the second year.		
<i>Item 86</i>		
For retirement of State Police officers\$242,970 the first year, and \$267,500 the second year.		
It is hereby provided that out of this appropriation there shall be paid the cost of the required valuation report by the actuary and other necessary admin- istrative expense, not to exceed in either year of the biennium the sum of \$3,000.		

Item 87

In the event the Superintendent of
State Police is requested, as provided by
law, to police a turnpike project the
Superintendent is authorized to expend

	<i>First Year</i>	<i>Second Year</i>
such additional amounts from the State highway maintenance and construction fund for such purpose as the turnpike authority making the request shall agree to reimburse and the Governor shall approve.		

Item 88

All appropriations herein made to the
Department of State Police shall be paid
only out of revenues collected and paid
into the State treasury by the Division
of Motor Vehicles or by the Department
of State Police and credited to the State
highway maintenance and construction
fund, and none of the appropriations
made to the said division shall be paid
out of the general fund of the State
treasury, provided further, however,
that no expenditures out of this appro-
priation shall be paid out of the revenue
derived from the taxes levied under
§§ 58-628, 58-711, and 58-744 of the Code
of Virginia as amended.

Item 89

All revenue received by the Depart-
ment of State Police for any purpose
whatsoever or in accordance with any
law or regulation administered by said
department shall be paid directly and
promptly into the State treasury to the
[fol. 653]
credit of the State highway maintenance
and construction fund.

Total for the Department of
State Police from special
funds\$5,558,845
the first year, and \$5,808,000 the
second year.

DEPARTMENT OF MILITARY AFFAIRS

	<i>First Year</i>	<i>Second Year</i>
<i>Item 90</i>		
For providing military protection for the State, to be expended in accordance with § 44-14 of the Code of Virginia	\$ 273,350	\$ 272,850

Out of this appropriation the following salary shall be paid:

Adjutant General\$9,350

Item 91

For the military contingent fund, out of which to pay the military forces of the Commonwealth when aiding the civil authorities, as provided by § 44-82 of the Code of Virginia, a sum sufficient.

In the event units of the Virginia National Guard shall be in Federal service, the sum allocated herein for their support shall not be used for any different purpose, except, with the prior written approval of the Governor, to provide for the Virginia State Guard.

DEPARTMENT OF CORPORATIONS

STATE CORPORATION COMMISSION

Item 92

For expenses of administration of the State Corporation Commission and expenses of retired Commissioners recalled to active duty, in accordance with law\$ 133,775 \$ 133,535

Out of this appropriation the following salaries shall be paid:

Chairman, State Corporation Commission\$14,000

Other members of the State Corporation Commission (2), at \$13,500 each\$27,000

	<i>First Year</i>	<i>Second Year</i>
<i>Item 93</i>		
For assessment and taxation of public service corporations	\$ 35,225	\$ 35,535

<i>Item 94</i>		
For rate regulation	\$ 21,155	\$ 20,730

<i>Item 95</i>		
For providing legal services for the State ..	\$ 20,445	\$ 20,795

Item 96

For regulating sale of securities, in accordance with the provisions of §§ 13-106 to 13-164 (Chapter 8 of Title 13 of the Code of Virginia)	\$ 17,750	\$ 17,750
---	-----------	-----------

With the prior written approval of the Governor, this appropriation may be increased, provided, however, that the total appropriations shall not exceed the sum collected from filing and license fees under the sections of the Code pertaining to this activity.

[fol. 654]

Item 97

For preparation and prosecution of rate cases	\$ 1,000	\$ 1,000
---	----------	----------

Item 98

For payment of court costs, a sum sufficient, estimated at	\$ 100	\$ 100
--	--------	--------

Item 99

For making appraisals, valuations, investigations and inspections of the properties and services of certain public service companies, and for the supervision and administration of the laws relative to public service companies, in accordance with §§ 58-660 to 58-671, inclusive, of the Code of Virginia, to be paid only out of the proceeds of the taxes levied

and collected under Article 15 of Chapter 12 of Title 58 of the Code of Virginia, and not out of the general fund of the State treasury, the amount derived from the aforesaid taxes, and unexpended balances from said tax revenue, estimated at\$299,775 the first year, and \$302,105 the second year.

Item 100

For the promotion of aviation in the public interest, to be paid only out of the tax on gasoline or fuel used in flights within the boundary of the State; and fees from the licensing or registering of airmen, aircraft, and airports, and from all heretofore unexpended balances derived from any of the above sources, and not out of the general fund of the State treasury\$126,035 the first year, and \$140,855 the second year.

Item 101

For regulating and taxing motor vehicle carriers, to be paid only out of fees collected from them by the State Corporation Commission and taxes on them collected under acts administered by the State Corporation Commission and paid into the State treasury to the credit of the highway maintenance and construction fund, the amount of said revenues, estimated at\$326,970 the first year, and \$334,100 the second year.

*First
Year*

*Second
Year*

*First
Year*

*Second
Year*

Item 102

For examination and supervision of banks, small loan companies, credit unions, and building and loan associations, to be paid only out of the fees, licenses, and taxes levied and collected for the examination and supervision of the said banks, small loan companies, credit unions, and building and loan associations and paid into the State treasury in accordance with law, and out of unexpended balances in said fees, licenses, and taxes heretofore paid into the State treasury, as aforesaid; provided, however, that no part of this appropriation shall be paid out of the general fund of the State treasury, not exceeding\$254,421 the first year, and \$254,339 the second year.

Out of this appropriation the following salary shall be paid:

Commissioner of Banking, not exceeding\$9,900
[fol. 655]

Item 103-104

For supervision and inspection of concerns conducting an insurance business in Virginia, as required by law, and for administration of the Virginia Fire Hazards Law, to be paid out of the fees, licenses and taxes levied and collected for the payment of the expenses incurred in supervising and inspecting the aforesaid concerns, and paid into the State treasury in accordance with law, and out of unexpended balances in said fees, licenses and taxes heretofore paid into the State treasury as aforesaid; provided, however, that no part of this

appropriation shall be paid out of the general fund of the State treasury, not exceeding\$367,520 the first year, and \$371,870 the second year.

Out of this appropriation the following salary shall be paid:

Commissioner of Insurance,
not exceeding\$10,450

This sum includes any compensation for services as a zone manager of the National Association of Insurance Commissioners.

Total for the Department of Corporations	\$	229,450	\$	229,445
--	----	---------	----	---------

DEPARTMENT OF LABOR AND INDUSTRY

Item 105

For expenses of administration of the Bureau of Labor and Industry\$ 33,125 \$ 33,265

Out of this appropriation the following salary shall be paid:

Commissioner\$10,000

Item 106

For research and statistics\$ 41,765 \$ 42,530

Item 107

For factory, institution and mercantile inspections\$ 95,310 \$ 97,930

Item 108

For mines and quarries inspection\$ 75,450 \$ 77,025

Item 109

For supervising the industrial employment of women and children\$ 49,255 \$ 50,065

	First Year	Second Year
Item 110		
For apprenticeship training	\$ 83,200	\$ 82,550
Total for the Department of Labor and Industry	\$ 378,105	\$ 383,365

DEPARTMENT OF WORKMEN'S COMPENSATION

INDUSTRIAL COMMISSION OF VIRGINIA

Item 111

For administration of the Virginia Workmen's Compensation Act, to be paid out of the receipts from taxes levied and collected and paid into the State treasury for the administration of the Workmen's Compensation Act in accordance with law, and expenses of retired Commissioners recalled to active duty, in accordance with law; provided, that no part of this appropriation shall be paid out of the general fund of the State treasury, not exceeding\$331,600 the first year, and \$304,425 the second year.

Out of this appropriation the following salaries shall be paid:
Commissioners (3), at \$11,000 each\$33,000

Item 112

For administration of the Workmen's Compensation Act there is hereby appropriated the additional sum of \$10,000 each year to be paid out of the workmen's compensation fund; provided, however, that no part of this appropriation shall be expended except with the Governor's approval in writing first obtained.

UNEMPLOYMENT COMPENSATION COMMISSION OF VIRGINIA

	<i>First Year</i>	<i>Second Year</i>
<i>Item 113</i>		
For expenses of administration of the Virginia Unemployment Compensation Act, exclusive of the payment of unemployment compensation benefits, a sum sufficient, estimated at\$2,679,200 the first year, and \$2,726,800 the second year.		

It is hereby provided that out of this appropriation the following salary shall be paid:

Commissioner\$11,000

Item 114

For administration of a merit system program for the Unemployment Compensation Commission of Virginia, a sum sufficient, estimated at\$6,000 each year.

Item 115

It is hereby provided that the aforesaid appropriations for administration of the Virginia Unemployment Compensation Act and administration of a merit system program shall be paid only out of the unemployment compensation administration fund established by § 60-21 and Article 2 of Chapter 8 of Title 60 of the Code of Virginia, and not out of the general fund of the State treasury. All monies which are deposited or paid into this fund are hereby appropriated and made available to the commission.

	<i>First Year</i>	<i>Second Year</i>
<i>Item 116</i>		
For payment of unemployment benefits as authorized by the Virginia Unemployment Compensation Act, a sum sufficient, estimated at\$7,200,000 each year.		

It is hereby provided that this appropriation for payment of unemployment benefits shall be paid only out of the monies requisitioned from the State of Virginia's account in the unemployment compensation trust fund in the treasury of the United States, and paid into the State treasury to the credit of the unemployment compensation fund in accordance with the provisions of §§ 60-90 through 60-94, inclusive, of the Code of Virginia, and not out of the general fund of the State treasury.

[fol. 657]

Item 117

For special unemployment compensation expenses to be paid only out of the Special Unemployment Compensation Administration Fund continued in effect by § 60-95 of the Code of Virginia, a sum sufficient, not to exceed\$10,000 each year.

Item 118

For refund of contributions and interest thereon in accordance with the provisions of § 60-94 of the Code of Virginia, to be paid only out of the clearing account created by § 60-90 of the Code of Virginia, a sum sufficient.

Item 119

For payment to the Secretary of the Treasury of the United States to the

credit of the unemployment compensation trust fund established by the Social Security Act, to be held for the State of Virginia upon the terms and conditions provided in the said Social Security Act, there is hereby appropriated the amount remaining in the clearing account created by § 60-90 of the Code of Virginia after deducting from the amounts paid into the said clearing account the refunds payable therefrom pursuant to § 60-94 of the Code of Virginia.

Total for the Unemployment Compensation Commission of Virginia from special funds\$9,895,200
the first year, and \$9,942,800 the second year.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Items 120-121

For administration of the functions, powers and duties assigned to the Virginia Alcoholic Beverage Control Board by the Alcoholic Beverage Control Act, to be paid only out of the monies collected and paid into the State treasury by the said board, as provided by § 4-23 of the Code of Virginia, and not out of the general fund of the State treasury, provided, however, with approval of the Governor, loans for the payment of such expenditures may be made from the general fund and from any other funds in the State treasury upon such terms as the Governor may approve, a sum sufficient, estimated at ...\$86,785,630 the first year, and \$86,846,230 the second year.

*First
Year*

*Second
Year*

*First
Year*

*Second
Year*

It is hereby provided that out of this appropriation the following salaries shall be paid:

Chairman of the board\$11,500
Vice-Chairman\$11,500
Member of board\$11,500

Salaries for other personal service shall be fixed by the Virginia Alcoholic Beverage Control Board, with approval by the Governor, as provided by the Alcoholic Beverage Control Act. (The sums for such purpose set forth in the Budget are estimates only, and are not to be construed as affecting the discretion of the Governor or the Board with regard thereto as provided in said Act.)

[fol. 658]

VIRGINIA STATE LIBRARY

Item 122

For maintenance and operation of the Virginia State Library\$ 307,110 \$ 312,420

Item 123

For acquiring, preserving and publishing records and books, including the micro-filming of newspapers and records\$ 110,000 \$ 110,000

Item 124

For State aid to public libraries in accordance with the provisions of §§ 42-24 to 42-32 of the Code of Virginia\$ 129,500 \$ 129,500

Total for Virginia State Library\$ 546,610 \$ 551,920

VIRGINIA MUSEUM OF FINE ARTS

Item 125

For maintenance and operation of the Virginia Museum of Fine Arts\$ 224,677 \$ 231,367

It is provided that no part of this appropriation from the general fund shall be expended in the maintenance and operation of theatrical productions.

Item 126

It is provided that the board of directors of the Virginia Museum of Fine Arts may expend for the maintenance and operation of said museum, and for the purchase of additional equipment and works of art, the revenues collected from interest on endowments or from the operation of said museum, or donated therefor, and paid into the State treasury, estimated at\$95,173 the first year, and \$97,983 the second year.

DEPARTMENT OF EDUCATION
STATE BOARD OF EDUCATION

Item 127

For expenses of administration of the State Board of Education, including the payment of premiums on official bonds in accordance with the provisions of § 2-8 of the Code of Virginia\$ 149,300 \$ 150,300

Out of this appropriation shall be paid the following salary:

Superintendent of Public Instruction (without fees, the fees collected by him to be paid into the general fund of the State treasury)\$14,850

Item 128-A

For research, planning and testing\$ 146,780 \$ 148,680

	<i>First Year</i>	<i>Second Year</i>
<i>Item 128-B</i>		
For teacher education and teaching scholarships for the public free schools, an amount not to exceed	\$ 612,500	\$ 696,100
To be apportioned under rules and regulations of the State Board of Education with the approval of the Governor.		

Item 129

For State supervision\$ 322,500 \$ 326,500
[fol. 659]

Item 130

For production of motion picture films\$ 36,950 \$ 37,125

Item 131

For production of motion picture films, to be paid only from funds derived by the State Board of Education from the production of such films and paid into the State treasury, and not out of the general fund of the State treasury\$15,000 each year.

Item 132

For local administration (salaries of division superintendents)\$ 265,000 \$ 265,000

This appropriation shall be expended for salaries of division superintendents under the conditions set forth in § 22-37, as amended, of the Code of Virginia.

Item 133

For the establishment and maintenance of local supervision of instruction in efficient elementary and * secondary schools, including visiting teachers, to be apportioned among such schools by the State Board of Education\$ 698,000 \$ 698,000

Item 134

For basic appropriation for * salaries of teachers employed only in efficient elementary and secondary schools

<i>First Year</i>	<i>Second Year</i>
\$34,342,000	\$37,882,000

It is provided that in the apportionment of this sum no county or city shall receive less than the amount prescribed by § 135 of the Constitution of Virginia.

It is provided, further, that the total of this sum, including the aforementioned apportionment, and the sums set forth in Items 135 and 136 shall be apportioned to the public schools by the State Board of Education under rules and regulations promulgated by it to effect the following provisions:

a. The apportionment shall be on the basis of an equal amount not exceeding \$1,500 for each year of the biennium for each State aid teaching position, provided, however, that no payment from this item for a State aid teaching position shall exceed two-thirds of the salary paid the incumbent of a State aid teaching position when the total salary of such incumbent is less than the amount of State aid available for each State aid teaching position. For purposes of this act, "State aid teaching position" is defined as one teaching position for each thirty (30) pupils in average daily attendance in the elementary grades and one teaching position for each twenty-three (23) pupils in average daily attendance in the high school grades. The average daily attendance figures used in the apportionment for the first fiscal year of this biennium

*First
Year*

*Second
Year*

shall be the average daily attendance figures for the school year preceding such apportionment. The average daily attendance figures used in the apportionment for the second fiscal year of this biennium shall be the average daily attendance figures for the second school year of the biennium.

b. No apportionment from this item shall be made to any county or city for State aid teaching positions in excess of the number of such positions in which teachers are actually employed; provided, however, that in exceptional circumstances and in the discretion of the State Board of Education, a county or city may employ fewer teachers than the number of assigned State aid teaching positions allotted in accordance with paragraph a.

[fol. 660]
cess of the number of such positions in which teachers are actually employed; provided, however, that in exceptional circumstances and in the discretion of the State Board of Education, a county or city may employ fewer teachers than the number of assigned State aid teaching positions allotted in accordance with paragraph a.

c. No apportionment from this item shall be made to any county or city except for payment of salaries of teachers or other instructional personnel in the public schools, or for payment of tuition in lieu of teacher or other instructional salaries under rules and regulations of the State Board of Education.

d. The annual expenditure of funds derived from local sources, for instruction in the public schools shall not be less than the annual expenditure made from local sources for such instruction for the school year 1955-1956. However, if a county or city

has established and maintains a salary schedule for teachers and other instructional personnel satisfactory to the State Board of Education, the expenditure, derived from local funds, for the salaries of teachers and other instructional personnel may be reduced below such expenditures for the school year 1955-1956, provided the reduction and the amount of reduction are approved by the State Board of Education. Also, a county or city may reduce such expenditure in exceptional circumstances due to a substantial loss in average daily attendance of pupils in the county or city, or in other exceptional local conditions, provided the reduction and the amount of reduction are approved by the State Board of Education.

e. The county or city shall pay from local funds at least thirty per cent (30%) of the total amount expended for salaries of teachers and other instructional personnel. However, a county or city shall be permitted by the State Board of Education to pay not less than twenty per cent (20%) of such amount if the county or city provides a levy or cash appropriation or a combination of both for schools which, when converted to an equivalent true tax rate, is as great as the average of all county or all city levies or cash appropriations or a combination of both such levies and appropriations for schools converted to an equivalent true tax rate; in converting a levy or cash appro-

*First
Year*

*Second
Year*

*First
Year*

*Second
Year*

priation or a combination of both for schools to an equivalent true tax rate, ratios of assessed valuations to true values used shall be the most recent such ratios determined by the State Tax Commissioner. For such counties or cities, the State Board of Education shall determine the per cent of local contribution, in no instance less than twenty per cent (20%) of the total amount expended for salaries of teachers and other instructional personnel.

f. A minimum salary schedule for teachers and other instructional personnel, satisfactory to the State Board of Education and approved by the Governor, shall be put into effect.

[fol. 661]

g. If any municipality annexes any portion of any county or counties, the State Board of Education shall make such equitable adjustment of the funds which would otherwise have gone to either as is in its opinion justified by the peculiar condition created by such annexation, and order distribution of such funds according to its findings. This provision shall not apply if a court of competent jurisdiction makes such adjustment and orders such distribution.

h. Allotments of funds from this item and from Items 135 and 136 beyond the constitutional appropriation shall be paid to a county or city only after submission of evidence satisfactory to the State Board of Education that the amount for which the allot-

ment is claimed has been or will be expended for the purpose designated and in full compliance with the terms and conditions set forth pursuant to this item.

It is further provided that in the event the total of the sums set forth in Items 134, 135, and 136 exceeds the amount necessary to make the apportionments required by this item, any balance remaining may, upon request by the State Board of Education, and with the prior written approval of the Governor, be transferred and added to the sums set forth in Item 138, or in Item 144 or in both.

Item 135

For basic appropriation for teachers' salaries, to be paid from the actual collections of special taxes segregated by § 135 of the Constitution of Virginia to support of the public free schools; provided, that no part of this appropriation shall be paid out of the general fund of the State treasury, estimated at\$1,100,000 each year.

Item 136

For basic appropriation for teachers' salaries, to be paid from the proceeds of interest payments to the Literary Fund; provided, that no part of this appropriation shall be paid out of the general fund of the State treasury, estimated at\$750,000 each year.

Provided that should such interest payments exceed the sum of \$750,000; then such excess to the extent of \$100,000 dur-

<i>Year First</i>	<i>Year Second</i>
-----------------------	------------------------

<i>First Year</i>	<i>Second Year</i>
-----------------------	------------------------

ing the second year of the biennium is hereby appropriated for transportation of pupils of primary and grammar grades, to be apportioned on a basis of school population, which shall be in addition to all other appropriations for pupil transportation.

Item 137

For salary equalization of teachers employed only in efficient elementary and secondary schools

\$ 7,079,680 \$ 9,174,625

a. It is provided that the State Board of Education shall first distribute from these sums to each county and city an amount equal to the amount paid to each such county and city during the year ended June 30, 1954, from Item 186, Chapter 716 of the Acts of Assembly of 1952.

[fol. 662]

b. It is provided that the State Board of Education shall next distribute from these sums to each county and city amounts required to place in effect the salary schedules approved for public school teachers by the State Board of Education and the Governor. The distribution shall be made subject to conditions stated herein and subject to rules and regulations, not conflicting therewith, promulgated by the State Board of Education. The amounts distributed subject to this paragraph shall not exceed the amounts necessary, as supplements to total salaries paid teachers in State aid teaching positions in 1955-56, to place such teachers on the salary

schedules. In addition, the State Board of Education may distribute from this item such sums as it deems reasonable to supplement local sums paid for teachers employed in new State aid teaching positions subsequent to 1955-56. No funds distributed from this item shall be expended to increase the salary of a teacher for the year 1956-57 or for the year 1957-58 by an amount exceeding \$200 each year for a teacher holding Collegiate Professional or related teaching certificates or \$150 each year for a teacher holding Normal Professional or related teaching certificates; with the prior written approval of the Governor, this limit of amount may be removed by the State Board of Education for the year 1957-58. If the sums available for this paragraph as listed herein or by authorized transfer hereto are not sufficient for the purposes described, the distribution of such sums shall be made on a pro rata basis; if such sums exceed the amounts required for the purposes described, any excess amounts may, with the prior written approval of the Governor, be transferred and added to the amounts set forth in Item 138.

c. It is provided further that the State Board of Education shall make no distribution from this item to any county or city which has not first complied with the conditions stated in paragraphs c-h, inclusive, of Item 134 and in paragraph b of Item 138.

*First
Year*

*Second
Year*

*First
Year*

*Second
Year*

Item 138

For providing a minimum educational program in efficient elementary and secondary schools only \$ 6,240,090 \$ 6,536,400

A county or city, which meets the requirements stated below is eligible, subject to rules and regulations promulgated by the State Board of Education, to receive an apportionment from this item to provide sufficient monies to operate a minimum educational program; a minimum educational program is defined as expenditure for school operation of not less than one hundred and seventy dollars per pupil in average daily attendance. To be eligible for an apportionment from this item, a county or city must:

a. Have projected, in the opinion of the State Board of Education, a well-planned educational program, and

b. Have expended from local sources for school operation, exclusive of capital outlay and debt service, an [fol. 663]

amount equivalent to a uniform tax levy of fifty cents per one hundred dollars (\$100) of true valuation of local taxable wealth within such county or city. The true valuation of local taxable wealth used for this purpose shall be that determined by the State Department of Taxation for the tax year 1950.

c. Be still unable, with the amount thus provided from local sources, other available State apportionments for the

public free schools, and Federal funds (not including capital outlay), to provide a minimum educational program as defined above.

It is further provided that the State Board of Education may, in its discretion, apply eligibility requirements and compute allocations from this fund separately for any town school district operated by a school board of not more than five members, and the county in which such town is located.

If the amount set forth in Items 134-136, inclusive, or in Item 137 are not sufficient for the purposes described therein, the State Board of Education with the prior written approval of the Governor, may transfer from Item 138 to Item 134 or to Item 137, or to both, such sums as may be deemed proper.

If the amount provided by this item is insufficient to meet the entire needs of those counties and cities which qualify for apportionments as herein provided, the amount shall be distributed to such counties and cities on a pro rata basis.

No county or city shall receive from the total appropriation under this item more than one hundred and seventy-five thousand dollars during the year ending June 30, 1957, or more than two hundred thousand dollars during the year ending June 30, 1958.

Item 139

For special education	\$	481,850	\$	507,350
-----------------------------	----	---------	----	---------

<i>First</i>	<i>Second</i>
<i>Year</i>	<i>Year</i>

<i>First</i>	<i>Second</i>
<i>Year</i>	<i>Year</i>

Item 140

For vocational education and to meet Federal aid	\$	3,414,315	\$	3,703,635
--	----	-----------	----	-----------

Item 141

For vocational education, the funds received from the Federal government for vocational education, provided that no part of this appropriation shall be paid out of the general fund of the State treasury, estimated at\$780,630 each year

It is provided that a sum, not less than \$4,500 each year, be transferred from this appropriation to the general fund of the State treasury as a proportionate share of the administrative expenses of the State Board of Education.

Item 142

For guidance and adult education	\$	40,000	\$	40,000
--	----	--------	----	--------

[fol. 664]

Item 143

For pupil transportation to and from efficient elementary and secondary schools only	\$	4,895,145	\$	5,035,145
--	----	-----------	----	-----------

This appropriation shall be distributed as reimbursement for costs of pupil transportation under rules and regulations to be prescribed by the State Board of Education; provided no county or city shall receive an allotment in excess of the amount actually expended for transportation of pupils to and from the public schools, exclusive of capital outlay; provided, further, that if the funds appropriated for this purpose are insufficient, the appropriation shall be prorated among the counties and cities entitled thereto.

First
Year

Second
Year

The General Assembly declares, finds and establishes as a fact that the mixing of white and colored children in any elementary or secondary public school within any county, city or town of the Commonwealth constitutes a clear and present danger affecting and endangering the health and welfare of the children and citizens residing in such county, city or town, and that no efficient system of elementary and secondary public schools can be maintained in any county, city or town in which white and colored children are taught in any such school located therein.

An efficient system of elementary public schools means and shall be only that system within each county, city or town in which no elementary school consists of a student body in which white and colored children are taught.

An efficient system of secondary public schools means and shall be only that system within each county, city or town in which no secondary school consists of a student body in which white and colored children are taught.

The General Assembly, for the purpose of protecting the health and welfare of the people and in order to preserve and maintain an efficient system of public elementary and secondary schools, hereby declares and establishes it to be the policy of this Commonwealth that no public elementary or secondary schools in which white and colored children are mixed and taught shall be entitled to or shall receive any funds from the State Treasury for their operation,

First
Year

Second
Year

and, to that end, forbids and prohibits the expenditure of any part of the funds appropriated by Items 133, 134, 137, 138 and 143 of this section for the establishment and maintenance of any system of public elementary or secondary schools, which is not efficient.

The appropriations made by Items 133, 134, 137, 138 and 143 of this section shall be deemed to be appropriated separately to the counties and cities and the funds made available and apportioned to the counties and cities severally and separately by the Department of Education and the State Board of Education shall be separately subject to the limitations imposed in this section for their use, which limitations and a strict observance thereof shall be a condition precedent to their use.

[fol. 665]

For the purposes of this section and all other applicable laws, the public schools of the counties, cities and towns shall consist of two separate classes, namely, elementary and secondary schools.

Notwithstanding any other provisions of this Chapter or the provisions of any other law, whenever the student body in any elementary or secondary public school shall consist of both white and colored children, the Department of Education, the State Board of Education, the State Comptroller, the State Treasurer, local school board, local treasurer, and any officer of the State or of any county or city who has power to distribute or expend any of the funds appropriated by Items 133, 134, 137, 138

and 143, each severally and collectively, are directed and commanded to refrain immediately from paying, allocating, transferring or in any manner making available to any county, city or town in which such school is located any part of the funds appropriated in Items 133, 134, 137, 138 and 143 for the maintenance of any public school of the class of the school in which white and colored children are taught. Whenever it is made to appear to the Governor, and he so certifies to the Department of Education, that all such schools of such class within any such county, city or town can be maintained and operated without white and colored children being mixed or taught therein, the funds appropriated in Items 133, 134, 137, 138 and 143 to such county or city shall be made available, subject to the limitations contained herein and only for such period of time as it is made to appear to the Governor that there is no school of that class being operated in such county, city or town, in which white and colored children are mixed and taught, provided that all the limitations herein contained shall again be effective immediately whenever it appears that any children are being mixed and taught in any public school of the class involved.

It is provided that the limitations herein set forth shall not prohibit the release and distribution of the funds apportioned and allocated, or any unexpended part thereof, to which any county, city or town would otherwise be entitled, to such county, city or town

First
Year

Second
Year

First
Year

Second
Year

for the payment of salaries and wages of unemployed teachers in State aid teaching positions, and other public school employees, who are under contract and for educational purposes which may be expended in furtherance of elementary and secondary education of Virginia students in nonsectarian private schools, as may be provided by law.

Item 144

For a discretionary fund to be disbursed under the rules and regulations of the State Board of Education \$ 100,000 \$ 100,000

It is provided that the State Board of Education may make apportionments from this discretionary fund only under the following conditions:

(1) For the purpose of aiding certain counties to operate and maintain a nine-month school term: satisfactory assurances must be given to the State Board of Education that (a) without aid from this fund the county is unable from local funds and other State

[fol. 666]

funds to operate and maintain a nine-month school term, (b) maximum local funds for instruction, operation, and maintenance have been provided, and (c) such local funds, with other State funds apportioned to said county, and aid from this appropriation will enable the schools in said county to be operated and maintained for a term of not less than nine months.

(2) For the purpose of aiding those counties and/or cities which are experiencing extraordinary continuing

increases in average daily attendance, thereby requiring employment of additional teachers in excess of the number anticipated on the basis of average daily attendance of pupils enrolled during the preceding school year.

Item 145

For sick leave with pay for teachers in the public free schools, to be expended in accordance with regulations of the State Board of Education, subject to the prior written approval of the Governor

*First
Year* *Second
Year*

\$ 231,000 \$ 241,000

Item 146

For providing free text books

\$ 203,000 \$ 203,000

Item 147

For maintenance of libraries and other teaching material in public schools

\$ 451,775 \$ 471,325

Item 148

For maintenance of libraries and other teaching materials in public schools, to be paid only out of the funds received from localities, and paid into the State treasury, and not out of the general fund of the State treasury, estimated at\$233,000 the first year, and \$244,000 the second year.

Item 149

For industrial rehabilitation

\$ 526,065 \$ 533,735

Item 150

For industrial rehabilitation to be paid only from funds received from the Federal government and from local con-

*First
Year* *Second
Year*

tributions for any such rehabilitation and not out of the general fund of the State treasury, estimated at\$796,135 the first year, and \$811,465 the second year.

Item 151

For industrial rehabilitation to be paid from the fund for the administration of the Workmen's Compensation Act and not out of the general fund of the State treasury\$17,000 each year.

Item 152

For placement and training of veterans in business establishments

\$ 8,260 \$ 8,285

Item 153

For placement and training of veterans in business establishments, to be paid only out of funds received from the Federal government for this purpose, and not out of the general fund of the State treasury\$235,000 each year.

[fol. 667]

Item 154

For the education of orphans of soldiers, sailors and marines who were killed in action or died, or who are totally and permanently disabled as a result of service during the World War

\$ 16,000 \$ 18,000

It is provided that the sum hereby appropriated shall be expended for the sole purpose of providing for tuition, institutional fees, board, room rent, books and supplies, at any educational or training institution of collegiate or

secondary grade in the State of Virginia, approved in writing by the Superintendent of Public Instruction, for the use and benefit of the children not under sixteen and not over twenty-five years of age, either of whose parents was a citizen of Virginia at the time of entering war service and was killed in action or died from other causes in World War I extending from April 6, 1917, to July 2, 1921, or in any armed conflict subsequent to December 6, 1941, while serving in the army, navy, marine corps, air force or coast guard of the United States, either of whose parents was, or is, or may hereafter become totally and permanently disabled due to such service during either such period, whether such parents be now living or dead.

Such children upon recommendation of the Superintendent of Public Instruction, shall be admitted to State institutions of secondary or college grade, free of tuition.

The amounts that may be, or may become, due hereunder by reason of attendance at any such educational or training institution, not in excess of the amount specified hereinafter shall be payable from this appropriation hereby authorized on vouchers approved by the Superintendent of Public Instruction.

The Superintendent of Public Instruction shall determine the eligibility of the children who may make application for the benefits provided for herein; and shall satisfy himself of the attendance and satisfactory progress of such children at such institutions and of the

*First
Year*

*Second
Year*

*First
Year*

*Second
Year*

accuracy of the charge or charges submitted on account of the attendance of any such children at any such institution, provided, that neither said Superintendent nor any member of the State Board of Education, nor any official or agent or employee thereof, shall receive any compensation for such services.

Not exceeding four hundred dollars shall be paid hereunder for any one child for any one school year; and no child may receive benefits of this or similar appropriations for a total of more than four school years.

This amendment shall not operate to divest any such child of any such scholarship now holding any such scholarship under this act except that the four-year limitation herein provided for shall apply to any scholarship heretofore issued.

Item 155

For twelve months' principals \$ 300,000 \$ 300,000

[fol. 668]

Item 156

For the acquisition and distribution of surplus equipment, to be paid only from funds derived by the State Board of Education from such acquisition and distribution of the said equipment and paid into the State treasury, and not out of the general fund of the State treasury \$30,000 each year.

Item 157

The State Board of Education shall make rules and regulations governing

the distribution and expenditure of such additional Federal, private and other funds as may be made available to aid in the establishment and maintenance of the public schools.

	<i>First Year</i>	<i>Second Year</i>
Total for the State Board of Education	\$60,560,210	\$67,076,205

CHAPTER 56

An Act to make available to certain counties, cities and towns funds to be expended in furtherance of the elementary and/or secondary education of pupils in nonsectarian private schools and for payments to teachers and other employees under certain conditions, and to provide for a determination of the amount and conditions for receipt of such funds.

[H 2]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. Whenever the amounts, or any part thereof, of the funds appropriated by Items 133, 134, 137, 138 and 143 of Chapter 716 of the Acts of Assembly of 1956, as amended, to which any county, city or town would otherwise have been entitled for the maintenance of its elementary public school system, shall be withheld as prescribed by law, the amounts so withheld shall be available to such county, city or town for the furtherance of the elementary education of the children of such county, city or town in nonsectarian private schools as hereafter provided, and for the payment of salaries and wages of unemployed teachers in State aid teaching positions, and other public school employees, who are under contract; provided, nothing herein contained shall obligate the State to release such funds for the employment or compensation of unemployed teachers and other public

school employees beyond the terms and conditions of their contracts, or the end of the school year, whichever is longer.

§ 2. Whenever the amounts, or any part thereof, of the funds appropriated by Items 133, 134, 137, 138 and 143 of Chapter 716 of the Acts of Assembly of 1956, as amended, to which any county, city or town would otherwise have been entitled for the maintenance of its secondary public school system, shall be withheld as prescribed by law, the amounts so withheld shall be available to such county, city or town for the furtherance of the secondary education of the children of such county, city or town in nonsectarian private schools as hereafter provided, and for the payment of salaries and wages of unemployed teachers in State aid teaching positions, and other public school employees, who are under contract; provided, nothing herein contained shall obligate the State to release such funds for the employment or compensation of unemployed teachers and [fol. 669] other public school employees beyond the terms and conditions of their contracts, or the end of the school year, whichever is longer.

§ 3. Such amounts as may be available to any county, city or town under the provisions of §§ 1 and 2 of this act shall be distributed, under rules and regulations of the State Board of Education, to such county, city or town, for grants to pupils attending nonsectarian private schools, upon the following basis:

(a) Each pupil attending a nonsectarian private school, elementary or secondary as the case may be, shall be entitled to an amount equal to the quotient derived by dividing the total amount withheld for the elementary or secondary public school system by the enrollment of pupils formerly attending those schools which comprised the elementary or secondary public school system for which such amounts have been withheld.

§ 4. Should any of the funds authorized to be distributed under § 3 of this act remain undistributed at the end of any school year, such surplus may be released under rules and regulations of the State Board of Education to the counties, cities and towns entitled thereto for distribu-

tion to the pupils to whom grants for that school year were originally made; provided, however, in no case shall the total amounts distributed to a pupil exceed the total cost of his attendance for that school year in a nonsectarian private school; provided, further, the aggregate received on account of any one pupil shall not from all public sources exceed three hundred fifty dollars.

§ 5. No distribution shall be made to any county, city or town under the provisions of §§ 3 and 4 of this act except upon receipt of evidence, satisfactory to the State Board of Education, that such sums have been or will be expended in furtherance of the elementary and/or secondary education of the children of such county, city or town in nonsectarian private schools.

§ 6. In the event of the unavailability of any data for the current school year which would otherwise have been utilized by the State Board of Education in making allocations in accordance with the provisions of Items 133, 134, 137, 138 and 143 of Chapter 716 of the Acts of Assembly of 1956, as amended, and rules and regulations of the State Board, the most recent data available to the State Board of Education shall be used in making such allocations.

CHAPTER 57

An Act to authorize certain localities to raise sums of money by a tax on property, subject to local taxation, to be expended by local school authorities for educational purposes including cost of transportation, and to impose penalties for violations.

[H 3]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. In any county or city wherein no levy is laid or appropriation made for operation of the public schools, the governing body of such county or city is hereby authorized to provide for the levy and collection of such educational taxes as in its judgment the public welfare may

require. Such levy shall be on property, subject to local taxation, not to exceed in the aggregate in any one year, the rate fixed by § 22.126 of the Code, as amended.

§ 2. In lieu of making such levy, the governing body of any such county or city may, in its discretion, make an appropriation for educational purposes from funds derived from the general county or city levy of an amount not more [fol. 670] than the maximum amount which would result from the laying of the educational levy authorized by § 1 hereof. In addition to this, the governing body of any such county or city may appropriate from any funds available, such sums as in its judgment may be necessary or expedient for educational purposes.

§ 3. In any town wherein no levy is laid or appropriation made for operation of the public schools, if the same be a separate school district approved for operation, the governing body thereof is hereby authorized to provide for the levy and collection of such additional educational taxes on all the property in the town subject to local taxation at such rate as it may deem proper, but in no event more than one dollar on the one hundred dollars of the assessed value of property in the town subject to taxation by the local town authorities. In lieu of such levy, the governing body may make an appropriation out of the general town levy and from any other source, of such sums as in its judgment may be deemed necessary or expedient for educational purposes.

§ 4. Any town wherein no levy is laid or appropriation made for operation of the public schools, if the same be a separate school district approved for operation, shall be entitled to its share of school funds as distributed under § 22.141 of the Code, as amended, and is hereby authorized and required to expend same for educational purposes, as provided in § 7 of this act.

§ 5. If any town constitutes a separate town school district approved for operation and any county in which it is located does not lay a levy or make an appropriation for operation of the public schools, the governing body of such town may impose such additional town school levy on locally taxable property, not exceeding three dollars on

the one hundred dollars of the assessed value of the property in any one year, as in its discretion is required. If the county imposes a levy or makes appropriations for educational purposes the town school district shall receive its share of such funds in the same manner as provided in § 22-141 of the Code, as amended, for the distribution of school funds, to be expended as the town school board directs.

§ 6. The procedure to be followed by school officials and local tax-levying bodies for obtaining the educational funds provided for in this act shall, except insofar as altered here, be mutatis mutandis the same as prescribed by law for the raising of funds for public school purposes.

§ 7. The educational funds raised or appropriated under §§ 1, 2, 3, and 4 hereof, or otherwise made available, shall be expended by the school board in payment of grants for the furtherance of the elementary or secondary education, as the case may be, of the children of such county, city or town in nonsectarian private schools. The local school board may by rules and regulations provide for the cancellation or revocation of any such grant which the board finds was not obtained in good faith; provided, that the action of the board in cancelling or revoking any grant shall be subject to review by bill of complaint against the school board to the circuit or corporation court having equity jurisdiction.

§ 8. School boards may provide transportation for those pupils qualifying for such grants, and in such event, shall be entitled to reimbursement out of State funds to the same extent as counties and cities are reimbursed for costs expended for transportation of pupils to and from the public schools.

§ 9. It shall be unlawful for any person to obtain, seek to obtain, expend, or seek to expend, any tuition or transportation grant for any purpose other than the education or transportation of the child for which such grant is sought or obtained. Violation hereof shall, except for [fol. 671] offenses punishable under § 18-237 of the Code, constitute a misdemeanor and be punished as provided by law.

CHAPTER 58

An Act to require the inclusion in school budgets of amounts sufficient for the payment of grants for educational purposes; to provide for local governing bodies raising money for educational purposes and making appropriations therefor; to provide for the expenditure of such funds for payment of such grants and transportation costs under certain circumstances; to empower the State Board of Education to make rules and regulations and pay such grants; to provide for the withholding of certain funds and the use thereof; and to provide penalties for the violation of this act.

[H 4]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. The division superintendent of schools of every county, city, or town if the same be a separate school district approved for operation, wherein public schools are operated shall include in his estimate of the school budget required by law, the amount of money needed for the payment of grants for the furtherance of the elementary or secondary education, as the case may be, of the children of such county, city or town, in nonsectarian private schools.

§ 2. The boards of supervisors of the several counties and the councils of the several cities and towns, if the same be separate school districts approved for operation, shall include in the school levy or cash appropriation provided by law the amount necessary to meet the estimates required by § 1 hereof, notwithstanding the provisions of §§ 22-126 and 22-127 of the Code of Virginia. Such boards of supervisors and councils are hereby authorized to make a cash appropriation for the payment of grants under this act even though a school budget is not before them for consideration.

§ 3. The educational funds so raised and other available funds shall be expended by the local school board in payment of grants for the furtherance of the elementary

or secondary education, as the case may be, of the children of such county, city or town in nonsectarian private schools; such payments shall be made to parents, guardians or other persons having custody of children who have been assigned to or are in attendance at public schools wherein both white and colored children are enrolled; provided, the parents, guardians or other persons having custody of such children shall make affidavit to the local school board that they object to the assignment of such children to or their attendance at any school wherein both white and colored children are enrolled. No mandamus to compel payment of a grant under this section shall lie as to any child who has been assigned or reassigned to a school wherein only members of his race are enrolled.

§ 4. The total amount of each such grant shall be the amount necessary to be expended by the parent, guardian or other person having custody of the child, in payment of the cost of his attendance at a nonsectarian private school for the current school year; provided, however, that such annual grant, together with any tuition grant received from the State, shall not exceed the total cost of operation per pupil in average daily attendance in the public schools for the locality making such grant as determined for the pre-[fol. 672] ceding school year by the Superintendent of Public Instruction.

§ 5. Any school board providing transportation to pupils attending its public schools shall supply like transportation for those pupils qualifying for grants under this act; provided that any such school board may in lieu of providing such transportation provide such pupils with a transportation grant equal to the per pupil cost of transportation in such school district for the preceding year.

§ 6. Payments for grants under the provisions of this act shall be considered in the distribution of State funds allocated and apportioned for such purposes as though such expenditures were made by the locality for operation and maintenance of the public schools.

§ 7. Local school boards are hereby authorized to promulgate such rules and regulations not inconsistent with

those of the State Board of Education as may be deemed necessary to carry out the purpose of this act. Such rules and regulations may provide for the cancellation or revocation of any grant which the board finds was not obtained in good faith; provided, that the action of the board in cancelling or revoking any such grant shall be subject to review by bill of complaint against the school board to the circuit or corporation court having equity jurisdiction.

§ 8. It shall be unlawful for any person to obtain, seek to obtain, expend, or seek to expend, any grant for any purpose other than the education or transportation of the child for which such grant is sought or obtained. Violation hereof shall, except for offenses punishable under § 18-237 of the Code, constitute a misdemeanor and be punished as provided by law.

§ 9. When the school budget has been prepared in accordance with § 1 hereof and the levy laid or appropriation made as set forth in § 2 hereof neither the school board nor the governing body shall have power to cancel, or transfer and use for any other purpose, the funds available for grants; provided, however, that if by the end of the eleventh month of the school year any such funds are unobligated they may be expended for any other object set forth in the school budget.

§ 10. For so long as such failure or refusal under § 3 hereof shall continue, the State Board of Education shall authorize and direct the Superintendent of Public Instruction, under rules and regulations of the State Board of Education, to provide for the payment of grants on behalf of such county, city or town out of funds to which such county, city or town would otherwise be entitled for the maintenance of its public school system in such county, city or town. In such event the Superintendent of Public Instruction shall at the end of each month file with the State Comptroller and with the school board and the governing body of such county, city or town a statement showing all disbursements and expenditures so made for and on behalf of such county, city or town, and the Comptroller shall from time to time as such funds become available

deduct from other State funds appropriated by the State, in excess of the requirements of the Constitution of Virginia, for distribution to such county, city or town, such amount or amounts as shall be required to reimburse the State for expenditures incurred under the provisions of this act. All such funds so deducted and transferred are hereby appropriated for the purposes set forth in this act and shall be expended and disbursed as provided in this act; provided, that in no event shall any funds to which such county, city or town may be entitled under the provisions of Title 63 of the Code be withheld from such county, city or town under the provisions of this act.

[fol. 673]

CHAPTER 59

An Act to provide that no child shall be required to attend integrated schools.

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. Notwithstanding any other provision of law, no child shall be required to enroll in or attend any school wherein both white and colored children are enrolled.

[H 5]

CHAPTER 60

An Act to amend and reenact § 22-72, as amended, of the Code of Virginia, relating to the powers and duties of the county school boards, and to amend the Code of Virginia by adding a new section numbered 22-72.1, authorizing county school boards to provide for transportation of pupils.

[H 6]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That § 22-72, as amended, of the Code of Virginia, be amended and reenacted, and that the Code of Virginia be

amended by adding a new section numbered 22-72.1, the amended and new sections being as follows:

§ 22-72. Powers and duties.—The school board shall have the following powers and duties:

(1) Enforcement of school laws.—To see that the school laws are properly explained, enforced and observed.

(2) Rules for conduct and discipline.—To make local regulations for the conduct of the schools and for the proper discipline of the students, which shall include their conduct going to and returning from school, but such local rules and regulations shall be in harmony with the general rules of the State Board and the statutes of this State.

(3) Information as to conduct.—To secure, by visitation or otherwise, as full information as possible about the conduct of the schools.

(4) Conducting according to law.—To take care that they are conducted according to law and with the utmost efficiency.

(5) Payment of teachers and officers.—To provide for the payment of teachers and other officers on the first of each month, or as soon thereafter as possible.

(6) School buildings and equipment.—To provide for the erecting, furnishing, and equipping of necessary school buildings and appurtenances and the maintenance thereof.

(6a) Insurance.—To provide for the necessary insurance on school properties against loss by fire or against such other losses as deemed necessary.

(7) Drinking water.—To provide for all public schools an adequate and safe supply of drinking water and see that the same is periodically tested and approved by or under the direction of the State Board of Health, either on the premises or from specimens sent to such board.

(8) Textbooks for indigent children.—To provide such textbooks as may be necessary for indigent children attending public schools.

(9) Costs and expenses.—In general, to incur costs and expenses, but only the costs and expenses of such items as are provided for in its budget without the consent of the tax levying body.

[fol. 674] (10) Consolidation of schools *.—To provide for the consolidation of schools * whenever such procedure will contribute to the efficiency of the school system.

(11) Other duties.—To perform such other duties as shall be prescribed by the State Board or as are imposed by law.

§ 22-72.1. *County school boards may provide for the transportation of pupils; but nothing herein contained shall be construed as requiring such transportation.*

CHAPTER 61

An Act to amend and reenact § 22-205 of the Code of Virginia, relating to assignment of teachers by division superintendents.

[H 7]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That § 22-205 of the Code of Virginia be amended and reenacted as follows:

§ 22-205. The division superintendent shall have authority to assign to their respective positions in the school wherein they have been placed by the school board all teachers, * including principals, * and reassign them therein, provided no change or reassignment shall affect the salary of such teachers; and provided, further, that he shall make appropriate reports and explanations on the request of the school board.

CHAPTER 62

An Act to authorize local school boards to expend funds designated for public school purposes for such grants in furtherance of elementary and secondary education as may be permitted by law without first obtaining authority therefor from the tax levying body.

[H 8]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. The local school board of every county, city or town is hereby authorized when it is deemed to be for the public benefit, to transfer school funds, excluding those for capital outlay and debt service, within the total amount of its authorized budget, without the consent of the tax levying body, notwithstanding any other law to the contrary, and to expend same in furtherance of the elementary and secondary education of the children of such county, city or town in nonsectarian private schools as may be permitted by law.

CHAPTER 63

An Act to provide for the employment of counsel to defend the actions of members of school boards and to provide for the payment of costs, expenses and liabilities levied against such members out of local public funds.

[H 9]

Approved September 29, 1956

[fol. 675] Be it enacted by the General Assembly of Virginia:

1. § 1. Notwithstanding any other provision of law, the attorney for the Commonwealth or other counsel approved by the school board may be employed by the school board of any county, city or town, to defend it, or any member thereof, or any school official, in any legal proceeding, to which the school board, or any member thereof, or any school official, may be a defendant, when such proceeding

is instituted against it, or against any member thereof by virtue of his actions in connection with his duties as such member.

§ 2. All costs, expenses and liabilities of proceedings so defended shall be a charge against the county, city or town treasury and paid out of funds provided by the governing body of the county, city or town in which such school board discharges its functions.

2. An emergency exists and this act is in force from its passage.

CHAPTER 64

An Act to amend and reenact § 51-111.10, as amended, of the Code of Virginia, relating to the meaning of certain words as used in the Virginia Supplemental Retirement Act, and to amend the Code of Virginia by adding to Title 51, Chapter 3.2 thereof, an Article 4.1, containing §§ 51-111.38:1 through 51-111.38:3, providing for the retirement of certain private school teachers.

[H 10]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That § 51-111.10, as amended, of the Code of Virginia be amended and reenacted and that the Code of Virginia be amended by adding Article 4.1, containing §§ 51-111.38:1 through 51-111.38:3, to Chapter 3.2, Title 51, the amended section and new article being as follows:

§ 51-111.10. Definitions.—As used in this chapter unless a different meaning is plainly required by the context:

(1) "Retirement system" means the Virginia Supplemental Retirement System provided for in § 51-111.11;

(2) "Board" means the board of trustees as provided by § 51-111.17;

(3) "Medical board" means the board of physicians as provided by § 51-111.26;

(4) "Teacher" means any person who is regularly employed on a salary basis as a professional or clerical employee of a county, city or other local public school board or of a corporation participating in the retirement system as provided by Article 4.1;

(5) "State employee" means any person who is regularly employed full time, on a salary basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, not oftener than semimonthly, in whole or in part, by the Commonwealth or any department, institution or agency thereof, except (a) an officer elected by popular vote or, with the exception of the Auditor of Public Accounts and the Director of the Division of Statutory Research and Drafting, by the General Assembly or either House thereof, (b) a trial justice, county or city treasurer, commissioner of the revenue, Commonwealth's attorney, clerk, sheriff, sergeant or constable, and a deputy or employee of any such officer, and (c) any employee of a political subdivision of the Commonwealth;

(6) "Employee" means any teacher, State employee, * officer or employee of a locality participating in the retirement system as provided in Article 4, or any employee of [fol. 676] a corporation participating in the retirement system as provided in Article 4.1;

(7) "Employer" means Commonwealth, in the case of a State employee, * the local public school board in the case of a public school teacher, or the locality or corporation participating in the retirement system as provided in Articles 4 and 4.1;

(8) "Member" means any person included in the membership of the retirement system as provided in this chapter;

(9) "Service" means service as an employee;

(10) "Prior service" means service as an employee rendered prior to the date of establishment of the retirement system for which credit is allowable under §§ 51-111.39

to 51-111.41, 51-111.63 and 51-111.64 or service as an employee for such periods as provided in § 51-111.32;

(11) "Membership service" means service as an employee rendered while a contributing member of the retirement system except as provided in §§ 51-111.45, 51-111.57, 51-111.63 and 51-111.64;

(12) "Creditable service" means prior service plus membership service for which credit is allowable under this chapter;

(13) "Beneficiary" means any person entitled to receive benefits under this chapter;

(14) "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the members' contribution account, together with interest credited on such amounts and also any other amounts he shall have contributed or transferred thereto including interest credited thereon as provided in § 51-111.49;

(15) "Creditable compensation" means the full compensation payable to an employee working the full working time for his position which is in excess of twelve hundred dollars per annum, except when computing a disability retirement allowance in which event no exclusion shall apply; in cases where compensation includes maintenance or other perquisites, the Board shall fix the value of that part of the compensation not paid in money;

(16) "Average final compensation" means the average annual creditable compensation of a member during his five highest consecutive years of creditable service if less than five years; provided, that the retirement allowance of any person who retired under this chapter between March one, nineteen hundred fifty-two and June thirty, nineteen hundred fifty-four shall be recomputed in accordance with this section and such recomputation shall be applicable only to allowances payable on and after July one, nineteen hundred fifty-six;

(17) "Retirement allowance" means the retirement payments to which a member is entitled as provided in this chapter;

(18) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board;

(19) "Normal retirement date" means a member's sixty-fifth birthday; and

(20) "Abolished system" means the Virginia Retirement Act, §§ 51-30 to 51-111, repealed by Chapter 1 of the Acts of Assembly of 1952 as of February one, nineteen hundred fifty-two.

Article 4.1

Participation of Certain Educational Corporations in Retirement System

§ 51-111.38:1. Any corporation organized after the effective date of this act for the purpose of providing elementary or secondary education may by resolution duly adopted by its board of directors and approved by the Board of Trustees of the Virginia Supplemental Retirement System elect to have teachers employed by it become eligible to participate in the retirement system. Acceptance [fol. 677] of the teachers employed by such an employer for membership in the retirement system shall be optional with the Board and if it shall approve their participation, then such teachers, as members of the retirement system, shall participate therein as provided in the provisions of this chapter.

§ 51-111.38:2. The chief fiscal officer of the employer shall submit to the Board such information and shall cause to be performed in respect to the employees of the employer such duties as shall be prescribed by the Board in order to carry out the provisions of this chapter.

§ 51-111.38:3. The employer contribution rate shall unless otherwise fixed by the Board be the normal and accrued contribution rate determined as provided in § 51-111.47 for members of the retirement system qualifying under § 51-111.10 (4). The contributions so computed shall be certified by the Board to the chief fiscal officer of the employer. The amounts so certified shall be a charge

against the employer. The chief fiscal officer of each such employer shall pay to the State Treasurer the amount certified by the Board as payable under this article, including such charges as the Board may deem necessary to cover costs of administration, and the State Treasurer shall credit such amounts to the appropriate accounts of the retirement system.

CHAPTER 65

An Act to amend the Code of Virginia by adding a new section numbered 2-86.1, providing that the Attorney General shall render certain services to local school boards, and to appropriate funds.

[H 11]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a new section numbered 2-86.1, the new section being as follows:

§ 2-86.1. The Attorney General shall give such advice and render such legal assistance as he deems necessary, when requested so to do by resolution adopted by a county, city or town school board, upon matters relating to the commingling of the races in the public schools of the State.

2. There is hereby appropriated out of the general fund of the State treasury to the office of the Attorney General for each year of the biennium beginning July one, nineteen hundred fifty-six, the sum of one hundred thousand dollars.

CHAPTER 66

An Act to amend and reenact § 22-5, as amended, of the Code of Virginia, relating to minimum school terms.

[H 12]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That § 22-5, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 22-5. Minimum term.—The school board of each county and city in the State is empowered * to maintain

the public free schools of such county and city for a period of at least nine months or one hundred and eighty teaching days in each school year; provided, however, * that if the [fol. 67S] length of the term of any school be reduced *, the amount paid by the State shall, unless otherwise provided by law, be reduced in the same proportion as the length of the term has been reduced from nine months.

CHAPTER 67

An Act to amend and reenact § 15-577 of the Code of Virginia, relating to county and city budgets; to amend and reenact § 22-117 of the Code of Virginia, relating to when State funds are to be paid for public schools; to amend and reenact § 22-125 of the Code of Virginia, relating to procedure when governing body refuses to provide funds for public school purposes; to amend and reenact § 22-126 of the Code of Virginia, as amended, relating to school levies and the use thereof; to amend and reenact § 22-127 of the Code of Virginia, relating to cash appropriations in lieu of school levies; to amend and reenact § 22-129 of the Code of Virginia, relating to town levies and appropriations for public school purposes; to amend and reenact § 22-138 of the Code of Virginia, relating to unexpended school funds; to amend the Code of Virginia by adding thereto a section numbered 22-127.1, relating to levies and appropriations by the governing bodies of counties, cities and towns for school purposes, so as to authorize such governing bodies to withhold funds already made available for school purposes, and to provide penalties for violation.

[H 13]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. That §§ 15-577, 22-117, 22-125, 22-126 as amended 22-127, 22-129, 22-138 of the Code of Virginia be amended and reenacted, and that the Code of Virginia be amended by adding a new section numbered 22-127.1, the amended sections and new section being as follows:

§ 15-577. A brief synopsis of the budget shall be published in a newspaper having general circulation in the locality affected, and notice given of one or more public hearings, at least fifteen days prior to the date set for hearing, at which any citizen of the locality shall have the right to attend and state his views thereon. The board of supervisors of any county not having a newspaper of general circulation may in lieu of the foregoing notice provide for notice by written or printed handbills, posted at such places as it may direct, so as to accomplish the purposes of this chapter. After such hearing is had the boards of supervisors of the counties and the councils of the cities and towns shall by appropriate order adopt and enter on the minutes thereof a budget covering all *tentative* expenditures for the locality or any subdivision thereof for the next appropriation year, itemized and classified as required by the preceding section. The boards, councils or other governing bodies may recess or adjourn from day to day or time to time as may be deemed proper before the final adoption of the budget, provided that the final adoption of the county budget by the board of supervisors shall not be later than the date on which the annual levy is made.

The proposed expenditures for school purposes as contained in any budget prepared under §§ 15-575 and 15-576 and published under this section shall be tentative only and conditioned upon appropriations for such purposes being made by the board, council or other governing body, from time to time, as authorized by § 22-127 and § 22-129.

§ 22-117. No State money shall be paid for the public schools in any county until evidence is filed with the State Board, signed by the superintendent of schools and the [fol. 679] clerk of the board, certifying that the schools of the county have been kept in operation for at least nine months, or a less period satisfactory to the State Board, or that arrangements have been made which will secure the keeping of them in operation for that length of time or a less period satisfactory to the State Board; provided, however, that no county shall be denied participation in State school funds, *except* as provided by law, when the board of the county has appropriated a fund equivalent to that which

would have been produced by the levying of the maximum local school tax allowed by law, or has levied the maximum local school tax allowed by law; provided, such appropriation or levy is based on assessments not lower than the assessments on real and personal property in such counties in the year nineteen hundred and twenty-five.

§ 22-125. If the governing body refuse to lay such a levy or make such cash appropriation as is recommended and requested by the division superintendent, then, on a petition of not less than twenty per centum of the qualified voters of the county or city qualified to vote, requesting the same, the circuit court of the county or corporation court of the city or the judge thereof in vacation may, in its or his discretion, order an election by the people of the county or city to be held during the month of June, to determine whether such levy or cash appropriation in lieu of such levy shall or shall not be fixed, provided that in those counties and cities in which a school levy is made the election shall be limited to the question as to whether or not such levy shall be increased; *provided that, whenever any such governing body has made a cash appropriation on a tentative basis only as provided by § 22-127, no petition hereunder shall lie and no order calling an election may be entered, even though no resolution authorizing the payment or transfer of any funds to the local school board has been made.*

§ 22-126. Each county and city is authorized to raise sums of money by a tax on all property, subject to local taxation, at such rate as may be deemed sufficient, but in no event * more than three dollars on the one hundred dollars of the assessed value of the property in any one year, to be expended by the local school authorities * in establishing, maintaining and operating such schools as in their judgment the public welfare requires *and in payment of grants for the furtherance of elementary or secondary education and transportation costs as required or authorized by law*; provided that in counties with a population of more than six thousand four hundred but less than six thousand five hundred, such rate may be increased to four dollars on the one hundred dollars of the assessed value

of the property therein in any one year; and provided further that in counties having a population of more than thirty-seven thousand but less than thirty-nine thousand such rate may be increased to four dollars on the one hundred dollars of the assessed value of the property therein in any one year.

§ 22-127. In lieu of making such school levy, the governing body of any county or city may, in its discretion, make a cash appropriation, *either tentative or final*, from the funds derived from the general county or city levy of an amount not less than the sum required by the county or city school budget provided for by § 22-122 and approved by the governing body of the county or city, but in no event to be less than the minimum nor more than the maximum amount which would result from the laying of the school levy authorized by the preceding section for the establishment, maintenance and operation of the schools of the county or city *and for the payment of grants for the furtherance of elementary or secondary education and transportation costs*. In addition to this, the governing body of any county or city may appropriate, *either tentatively or finally*, [fol. 680] from any funds available, such sums as in its judgment may be necessary or expedient for the establishment, maintenance and operation of the public schools in the county or city, *and for the payment of such grants and transportation costs required or authorized by law*.

Whenever any such appropriations have been made on a tentative basis, no part of the funds so appropriated shall, in any event, be available to the local school board except as the local governing body may, from time to time, by resolution authorize the payment or transfer of such funds, or any part thereof, to such local school board.

§ 22-127.1 Notwithstanding any other provision of law to the contrary, the governing body of any county, city or town which has made a levy for school purposes under § 22-126 or § 22-129 or has made a cash appropriation under § 22-127 or any other provision of law may by resolution direct the school board of such county, city or town and the treasurer of such county, city or town to make no further expenditures of local school funds until further

authorized to do so by such local governing body. Any school board, and each member thereof, and any treasurer who makes any expenditure of local school funds after being so directed not to make such expenditures shall be personally liable to make restitution to the county, city or town involved of the funds so expended in violation of any such resolution of the local governing body and may be removed from office under the provisions of Article 3, Chapter 16, Title 15, of the Code.

§ 22-129. The governing body of any incorporated town in the State is authorized to levy an additional tax on all the property in the town, subject to local taxation, at such rate as it may deem proper, but in no event more than one dollar on the one hundred dollars of the assessed value of property in the town subject to taxation by the local town authorities, for the support and maintenance, and capital outlay of the public schools in the town *and for the payment of grants for the furtherance of elementary and secondary education and transportation costs*. In lieu of such levy, the governing body may, *in its discretion*, make a cash appropriation, *either tentative or final*, out of the general town levy of an amount not more than the maximum amount which would result from the school levy for the support and maintenance of the public schools in the town *and for the payment of such grants and transportation costs required or authorized by law*.

Whenever any such appropriation has been made on a tentative basis, no part of the funds so appropriated shall, in any event, be available to the local school board except as the governing body may, from time to time, by resolution authorize the payment or transfer of such funds, or any part thereof, to such local school board.

§ 22-138. All sums of money derived from State funds for school or educational purposes, which are unexpended in any year in any county or city shall go into the * fund of the State from which derived for redivision the next year, unless the State Board direct otherwise. All sums derived from county or city funds unexpended in any year shall remain a part of the county or city funds, respectively, for use the next year, but no local funds shall be subject

to redivision outside of the county or city in which they were raised.

CHAPTER 70

An Act to create a Pupil Placement Board and confer upon it powers as to enrollment or placement of pupils in the public schools and determination of school attendance districts, and to provide for administrative procedure and remedies for pupils seeking enrollment in a school or a change from one school to another school.

[H 68]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. All power of enrollment or placement of pupils in and determination of school attendance districts for the public schools in Virginia is hereby vested in a Pupil Placement Board as hereinafter provided for. The local school boards and division superintendents are hereby divested of all authority now or at any future time to determine the school to which any child shall be admitted. The Pupil Placement Board is hereby empowered to adopt rules and regulations for such enrollment of pupils as are not inconsistent with the provisions hereinafter set forth. Such rules and regulations shall not be subject to Chapter 1.1 of Title 9 of the Code of Virginia, the short title of which is "General Administrative Agencies Act". The Pupil Placement Board and any of its agents hereinafter provided for shall have authority to administer oaths to those who appear before said Board or any of its agents in connection with the administration of this act.

§ 1a. There is hereby created a board to be known as the Pupil Placement Board which shall consist of three residents of the State appointed by the Governor to serve for terms to expire at the expiration of the term of the Governor making the appointment. Members of the Board shall receive as compensation for their services a per diem of twenty dollars for each day actually spent in the perform-

ance of their duties and shall be entitled to reimbursement for their necessary expenses incurred in connection therewith.

§ 2. The Pupil Placement Board may designate, appoint and employ such agents as it may deem desirable and necessary in the administration of this act. It may authorize such agents to hold the hearings hereinafter provided for and take testimony and submit recommendations in any and all cases referred to them by said Board.

§ 2a. For the conduct of such hearings and to facilitate the performance of the duties imposed upon it and its agents under this act, the Pupil Placement Board is authorized to promulgate all such rules and regulations and procedures and prescribe such uniform forms as it deems appropriate and needful and to require strict compliance with the same by all persons concerned.

§ 3. The Pupil Placement Board in enrolling each pupil in a school in each school district shall take into consideration:

(1) The effect of the enrollment on the welfare and best interests of such child and all other children in said school as well as the effect on the efficiency of the operation of said school.

(2) The health of the child as compared to other children in the school.

(3) The effect of any disparity between the physical and mental ages of any child to be enrolled especially when contrasted with the average physical and mental ages of the group with which the child might be placed.

(4) Availability of facilities.

(5) The aptitude of the child.

(6) Availability of transportation.

(7) The sociological, psychological, and like intangible social scientific factors as will prevent, as nearly as possible, a condition of socioeconomic class consciousness among the pupils.

(S) Such other relevant matters as may be pertinent to the efficient operation of the schools or indicate a clear and present danger to the public peace and tranquility affecting the safety or welfare of the citizens of such school district.

[fol. 682] § 4. After the effective date of this act, each school child who has heretofore attended a public school and who has not moved from the county, city or town in which he resided while attending such school shall attend the same school which he last attended until graduation therefrom unless enrolled, for good cause shown, in a different school by the Pupil Placement Board.

§ 5. Any child who desires to enter a public school for the first time following the effective date of this act, and any child who is graduated from one school to another within a school division or who transfers to a school division, or any child who desires to enter a public school after the opening of the session, shall apply to the Pupil Placement Board for enrollment in such form as it may prescribe, and shall be enrolled in such school as the Board deems proper under the provisions of this act. Such application shall be made on behalf of the child by his parent, guardian or other person having custody of the child.

§ 6. Both parents, if living, or the parent or guardian of a pupil in any school in which a child is enrolled by action of the Pupil Placement Board, if aggrieved by an action of the Board, may file with the Board a protest in writing within fifteen days after the placement of such pupil. Upon receipt of such protest the Board shall hold or cause to be held a hearing, within not more than thirty days, to consider the protest and at the hearing shall receive the testimony of witnesses and exhibits filed by such parents, guardians or other persons, and shall hear such other testimony and consider such other exhibits as the Board shall deem proper. The Board shall consider and decide each individual case separately on its merits. The Board shall publish a notice once a week for two successive weeks in a newspaper of general circulation in the city or county wherein the aggrieved party or parties reside. The notice shall contain the name of the applicant and the pertinent

facts concerning his application including the school he seeks to enter and the time and place of the hearing. The Board shall, within not more than thirty days after the hearing, file in writing its decision, enrolling such pupil in the school originally designated or in such other school as it shall deem proper. The written decision of the Board shall set forth the findings upon which the decision is based. Any parent, guardian or other person having custody of any child in the particular school in which a child is enrolled by action of the Board shall be deemed an interested party and shall have the right to intervene in such proceeding in furtherance of his interest.

§ 6a. Any party aggrieved by a decision of the Pupil Placement Board under this act, or any party defined as an interested party in § 6 may obtain a review of such decision by filing an application in writing for a review thereof with the Governor within fifteen days after such decision. Such application shall be by a petition in writing, specifying the decision sought to be reviewed, and the actions taken by the Pupil Placement Board, together with a statement of the grounds on which the petitioner is aggrieved or by reason of which he is an interested party. The petitioner shall file with his petition a copy of the decision of the Pupil Placement Board and a transcript of the proceedings before the Pupil Placement Board, which shall be furnished to the petitioner by the Pupil Placement Board within ten days after request therefor upon payment of the costs of such transcript by the petitioner. Upon the filing of a petition for a review with the Governor, the Governor shall set the same for a hearing and within fifteen days after the petition has been filed with him, he shall file, in writing, his decision, enrolling such pupil in the school originally designated or in such other school as he shall deem proper. The written decisions of the Governor shall set forth the findings upon which his decision is based.

[fol. 683] § 7. Any party aggrieved by a decision of the Governor under this act or any party defined as an interested party in § 6 may obtain a review of such decision by filing in the clerk's office of the circuit court of the county

or corporation court of the city in the jurisdiction of which such party resides, within fifteen days after such decision, a petition in writing, specifying the decision sought to be reviewed, and the actions taken by the Governor, together with a statement of the grounds on which the petitioner is aggrieved or by reason of which he is an interested party. The petitioner shall file with his petition a copy of the decision of the Governor and a transcript of the proceedings before the Governor, which shall be furnished to the petitioner by the Governor within ten days after request therefor upon payment of the costs of such transcript by the petitioner.

§ 7a. Any interested party, as defined in § 6 may, by petition, intervene for the purpose of making known and supporting his interest, in any proceeding for review of the Pupil Placement Board's decision instituted by an aggrieved party or by another interested party; and the court having jurisdiction of such review proceedings shall hear the evidence of as many interested parties, as defined in § 6, in any such review proceeding, as in its discretion it may deem proper, whether or not such interested parties shall have petitioned for such review or petitioned to intervene therein.

§ 8. Upon the filing of the petition the clerk of the court shall forthwith notify the Pupil Placement Board, requiring it to answer the statements contained in the application within twenty-one days, but failure to do so shall not be taken as an admission of the truth of the facts and allegations set forth therein. The clerk of the court shall publish a notice of the filing of such application once a week for two successive weeks in a newspaper of general circulation in the county or city for which the court sits and shall, in addition, post the same at the door of the courthouse. The notice shall contain the name of the applicant and the pertinent facts concerning his application including the school he seeks to enter, and shall set forth the time and place for the hearing. The proceedings shall be matured for hearing upon expiration of twenty-one days from the issuance of the notice to the Pupil Placement

Board by the clerk of the court and heard and determined by the judge of such court, either in term or vacation.

§ 9. The findings of fact of the Pupil Placement Board shall be considered final, if supported by substantial evidence on the record.

§ 10. From the final order of the court an appeal may be taken by the aggrieved party or any interested party, as defined in § 6, to the Supreme Court of Appeals as an appeal of right, in the same manner as appeals of right are taken from the State Corporation Commission.

§ 10a. An injunction proceeding may be brought in any State court of competent jurisdiction by the Commonwealth, or by any interested party as defined in § 6, for the purpose of restraining the performance of any act, or any intended or threatened act, which may be in evasion of, in disregard of, or at variance with, any of the foregoing provisions.

§ 11. Neither the Pupil Placement Board nor its agents shall be answerable to a charge of libel, slander or insulting words, whether criminal or civil, by reason of any finding or statement contained in the written findings of fact or decisions or by reason of any written or oral statement made during the proceedings or deliberations.

CHAPTER 69

An Act to declare an emergency to exist in any school division in which an efficient system of elementary or secondary public schools is not operated under local [fol. 684] authority, and in such case to invoke the police powers of the Commonwealth and the Constitutional powers of the General Assembly; to establish in every such school district, subject to the adoption by the local governing body of a resolution declaring the need therefor, an efficient system of elementary or secondary public schools operated by the Commonwealth; to provide that such system be operated and maintained by the Governor for and on behalf of the General Assembly; to define "efficient system of ele-

mentary public schools" and "efficient system of secondary public schools"; to provide for the use of local school buildings and related facilities of certain counties, cities and towns; to provide for the purchase of textbooks, supplies and equipment, and to permit local school boards to provide for the transportation of pupils; to provide for the administration of the school system hereby established and the employment of persons therein; to provide for the application of this act to counties, cities and towns; to vest in the State Board of Education the general supervision of such schools and to authorize it, subject to certain limitations, to make rules and regulations applicable thereto; to provide how proceedings against local school boards in matters involving the State established schools may be instituted; to prescribe the effect of certain proceedings brought against local school boards and the members thereof; to provide the circumstances under which pupils may be admitted to the State schools; to provide for the employment and assignment of teachers and other personnel; to prescribe the provisions of Title 22 of the Code of Virginia which shall apply to the State established and maintained schools; to provide the method for admission to the State established schools and the terms and conditions thereof.

[H 77]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. Whenever in any school division an efficient system of elementary or secondary public schools as herein defined is not operated under local authority, an emergency hereby is declared to exist. In such case the police powers of the Commonwealth and the Constitutional powers of the General Assembly hereby are invoked. In every school division in which such emergency shall exist there is hereby established by the General Assembly an efficient system of elementary or secondary public schools to be operated by the Commonwealth; provided, the local governing body adopts a resolution reciting the existence of such emergency and declaring the need for such State operated public school

system, in which case all of the provisions of this act shall apply.

A copy of such resolution, properly certified, shall be sent to, and kept by, the Keeper of the Rolls of the State. Upon receipt of such resolution it shall be the duty of the Keeper of the Rolls to forward a true copy thereof to the Governor, who shall thereupon, for and on behalf of the General Assembly, operate and maintain an efficient system of elementary or secondary schools in such school division pursuant to the provisions of this act.

Whenever in such school division an efficient system of elementary or secondary public schools as herein defined again shall be established and operated under local authority and the State Board of Education shall have certified such fact to the Keeper of the Rolls of the State such emergency shall cease to exist and the provisions of this act shall cease to apply to such school district.

The Keeper of the Rolls forthwith shall forward a true copy of such certificate to the Governor.

[fol. 685] § 2. As used in this act an efficient system of elementary public schools, hereinafter referred to as elementary schools, means and shall be only that system within each county, city or town in which no elementary school consists of a student body in which white and colored children are taught.

An efficient system of secondary public schools, hereinafter referred to as secondary schools, means and shall be only that system within each county, city or town in which no secondary school consists of a student body in which white and colored children are taught.

§ 3. The provisions of this act shall be controlling over all other provisions of law in conflict therewith. In any case in which any other provision of law is not in conflict with a provision of this act such other statute shall apply as to the system of public free schools hereby established.

§ 4. The system of schools established by the State shall use and be housed in the unused school buildings and related facilities now or hereafter owned, constructed, and

maintained by the school boards of the several counties, cities, and towns if such towns constitute separate school districts. The provisions of law applicable to the purchase of textbooks, supplies, and equipment by local school boards shall remain in force and it shall be the duty of such local school boards to supply same in accordance with law to the pupils attending the schools established and maintained by the State. The local school boards may provide transportation to pupils attending such schools.

§ 5. The State established public free school system shall be administered by the Governor for the General Assembly. Local school boards shall have such administration of such schools as will not conflict with this act or rules and regulations of the State Board of Education.

§ 6. The general supervision of the State established school system is vested in the State Board of Education which is authorized to make regulations for the operation thereof in an efficient manner. Provided, however, that except as specifically stated, nothing in this act shall be construed as conferring upon the State Board the power to determine the educational policies of the State in conflict with this act.

§ 7. No suit, action, prosecution or proceeding shall be brought against a local school board in any matter involving the State established schools unless the same be instituted by the Attorney General. If any local school board or member thereof be proceeded against otherwise such shall automatically terminate the powers of the members and such local school board as to any such State schools and the State Board of Education shall appoint a trustee to operate same until the powers of such local school board be reestablished by the General Assembly as to such State schools.

§ 8. The enrollment or placement of pupils in and the determination of school attendance districts for the State established public schools shall be accomplished only by such authority and in such manner as now or hereafter may be prescribed by law, and the school boards of the several counties, cities and towns shall have no power to admit or assign pupils except in accordance therewith.

§ 9. The local school board, subject to the State Board of Education, shall employ teachers and assign them to the several schools. Such teachers shall be paid from the funds available to operate such schools.

§ 10. The provisions of Title 22 of the Code of Virginia and other provisions of law applicable to the operation of public free schools by the school boards of the several school divisions shall apply mutatis mutandis to the schools established and operated in accordance with the provisions of § 1 hereof, except when a different requirement is imposed by this act or the State Board of Education.

§ 11. Each county, city, or town, if the same be a separate school district, and school district in which State established schools are operated shall raise from local [fol. 686] levies or cash appropriations an amount equivalent to that required under Chapter 716 of the Acts of Assembly of 1956, as amended, for local maintenance of schools and may so raise or appropriate such further sums as in their judgment the public welfare may require for assisting in the operation of the State established schools or, as the case may be, a system of elementary free public schools or a system of secondary free public schools. All such funds shall be paid into the State treasury, are hereby made available to the State Board of Education, and shall be expended by the State Board of Education in the respective counties, cities and towns which paid in such funds. Such expenditures shall be for the support of State established public schools in the county, city or town involved and for no other purpose.

CHAPTER 68

An Act to establish the responsibility of the Commonwealth of Virginia for the control of certain public schools under certain conditions; to that end to state the conditions which must exist in relation to such schools in order for the Commonwealth to assume such responsibility; to vest in the Commonwealth control of certain schools under stated conditions; and to confer powers and impose duties upon the Commonwealth to

be exercised by the Governor of Virginia; to provide the conditions under which such powers shall be designated; to empower the Governor to act in certain cases; to confer immunity from legal proceedings upon the Commonwealth of Virginia and the Governor; to refuse the consent of the Commonwealth to certain legal proceedings; to provide for the payment of certain educational grants; and to provide for the appropriation and expenditure of funds necessary under this act.

[S 56]

Approved September 29, 1956

Be it enacted by the General Assembly of Virginia:

1. § 1. The General Assembly declares that, as a consequence of the decisions of the Supreme Court of the United States affecting the public school system, school authorities of various political subdivisions of the Commonwealth of Virginia will be faced with unprecedented obstacles if and when ordered to enroll white and colored children in the same public schools, and such enforced integration of the races by a county or city school board could destroy the efficiency of the school in which white and colored children were so enrolled, and would tend to disturb the peace and tranquility of the community in which such school is located.

§ 2. The General Assembly declares that the welfare of all the citizens of the Commonwealth, the preservation of her public school system and a continuance of universal public education, make it necessary that there be uniformity of action throughout the State in all instances where school authorities acting voluntarily, or under compulsion, enroll a child in a public school, which enrollment would require a child of the white race to attend a public school with a child of the colored race, or which enrollment would require a child of the colored race to attend a public school with a child of the white race.

§ 3. From and after the effective date of this act, and in conformity with the public policy of the Commonwealth of Virginia as herein established in §§ 1 and 2, and specifically invoking the police powers of the Commonwealth and the constitutional powers of the General Assembly, the

Commonwealth of Virginia assumes direct responsibility for [fol. 687] the control of any school, elementary or secondary, in the Commonwealth, to which children of both races are assigned and enrolled by any school authorities acting voluntarily or under compulsion of any court order. The making of such an assignment, and the enrollment of such child, or children, shall automatically divest the school authorities making the assignment and the enrollment of all further authority, power and control over such public school, its principal, teachers and other employees, and all pupils then enrolled or ordered to be enrolled therein; and such school is closed and is removed from the public school system, and such authority, power and control over such school, its principal, teachers, other employees and all pupils then enrolled or ordered to be enrolled, shall be and is hereby vested in the Commonwealth of Virginia to be exercised by the Governor of Virginia in whom reposes the chief executive power of the State.

§ 4. Immediately upon such control, power and authority becoming vested in the Commonwealth of Virginia, by reason of the occurrences provided for in § 3 aforesaid, such school is closed, and shall not be reopened, as a public school, until, in the opinion of the Governor, and after an investigation by him, he finds and issues an executive order that (1) the peace and tranquility of the community in which the school is located will not be disturbed by such school being reopened and operated, and (2) the assignment of pupils to such school could be accomplished without enforced or compulsory integration of the races therein contrary to the wishes of any child enrolled therein, or of his or her parent or parents, lawful guardian or other custodian.

§ 5. If after investigation, the Governor concludes that such school cannot be reopened, under the conditions provided for in § 4 of this act, he is given authority to reorganize the school, its personnel, curriculum and facilities, and make such other changes therein as in his discretion may be necessary and desirable and needed to effect a reopening of such school and, in such reorganization and in making assignment of pupils to such school, or in mak-

ing reassignments to the school or schools in which they were formerly enrolled if he deems it necessary to preserve the peace and tranquility of the community or in making assignments of pupils to other available schools, he shall give due consideration to the laws of the Commonwealth relative to assignment and enrollment of pupils and due consideration to the individual safety, needs and welfare of the child or children involved and the safety, welfare and best interest of other children attending the school and the welfare and safety of the community, the availability of facilities, the health and aptitude of such child, the availability of transportation, and all other relevant factors, and their effect on such child and other children attending said school and on the welfare and best interest of the administration of the school or schools involved, which assignment and enrollment shall remain in effect for the remainder of the current school session unless otherwise ordered or authorized by the Governor; provided, however, no school which has been closed, as aforesaid, shall be reopened, or reorganized and reopened, by the Governor, unless and until he finds and issues an executive order that such school can be reopened or reorganized and reopened in accordance with the provisions of § 4 above.

§ 6. If after investigation, the Governor concludes that such school cannot be reopened, or cannot be reorganized and reopened, he is authorized to assign the children in such school to any available public schools where such an assignment is practicable and to the best interest of the children involved, and to the public school system of the political subdivision concerned, taking into consideration the factors aforesaid; and the Governor is further authorized to make available other facilities for the instruction [fol. 688] of such children, and to reassign the teachers in such closed school to other public schools in the political subdivision in which such closed school is located, or to other school or schools or other facilities made available for the instruction of such children, as authorized herein.

§ 7. Whenever any public school shall be closed under the circumstances aforesaid and as provided in the preceding sections of this act, and any child, or children, enrolled

in such school cannot be reassigned to another public school, the Governor and the duly constituted authorities of the locality formerly having control of such school are authorized to make available to such child or children an education or tuition grant from funds which would otherwise have been available for the operation of the school in which he or she was enrolled, or are otherwise available for that purpose, the amount of such grant to be expended under rules and regulations established by law or in the absence thereof to be promulgated by the Governor, which grants shall be expended by pupils attending non-sectarian private schools only, and provided, further, however, that the amount of such grant authorized and expended shall not exceed an amount equal to the quotient derived by dividing the total amount expended in the elementary and secondary school system of the political subdivision in which such school is located by the enrollment of pupils attending such public school system of such political subdivision for the year next preceding.

§ 8. Should the Governor, in carrying out the provisions of this act and in providing for the education of the children assigned and enrolled in any school which is closed hereunder, expend an amount in excess of the amount which would have been expended by the school board of the political subdivision in which such school is located, had such school not closed, authority is hereby given and the Governor is authorized to supplement the appropriation available to such political subdivision for educational purposes by an amount equal to such difference, such supplement to be made from funds which may be available and upon such conditions as may be decided upon by the fiscal officers of the Commonwealth, the State Board of Education and the duly constituted authorities of the locality involved.

§ 9. Whenever it is made to appear to the Governor that any school which has been closed under the conditions aforesaid can be reopened and operated in accordance with the provisions of § 4 of this act, the Governor is authorized to return forthwith the operation, control and maintenance of such school to the local school board of the political subdivision in which it is located.

§ 10. Notwithstanding any other provision contained in this act, if after investigation the Governor concludes, or, at any time the school board or board of supervisors of the county or the council of the city in which the closed school is located, certifies to the Governor by resolution that in it or their opinion such school cannot be reopened, or reorganized and reopened, in conformity with provisions of this act, the Governor shall so proclaim, in which event the said school shall again become a part of the public school system of the political subdivision in which it is located, and such school, elementary or secondary, shall along with all other schools of its class in the political subdivision in which it is located thereby become subject to the applicable provisions of the laws of this State.

§ 11. The Governor is given the power to take any and all actions and make such expenditures as may be necessary to carry into effect the provisions of this act and to fulfill the responsibilities assumed hereunder for the control of certain public schools upon the happening of certain contingencies.

[fol. 689] § 12. The Commonwealth of Virginia assumes the contractual obligation of the school board of any political subdivision, in which a school is closed under this act, with the principal, teachers and employees of such closed school, and it is directed that the salary, wage or compensation of such principal, teachers or employees be paid upon authorization of the Governor as agreed and provided by the terms of their contract with such school board and for the time specified in the contract, or so long as such principal, teachers and employees are under the control of the Governor by virtue of the provisions of this act; provided, however, nothing herein contained shall obligate the Commonwealth of Virginia to employ or compensate such principal, teachers and other employees beyond the expiration date of their contract with such school board.

§13. Every action authorized and taken in conformity with the provisions of this act shall be and is hereby declared to be the act of the General Assembly of Virginia and an act of the Governor of Virginia and an act taken on behalf of the sovereign Commonwealth of Virginia, and if

any suit, action or other legal proceedings be instituted relative thereto, the same shall be regarded and is hereby declared to be a suit, action or proceeding against the Commonwealth of Virginia, and the Commonwealth hereby declines and refuses for the Commonwealth of Virginia or the Governor of Virginia to be subject to such a suit unless it shall be one brought by the Attorney General of Virginia to enforce the laws of the Commonwealth.

2. If any part, section, portion or provision of this act or the application thereof to any person or circumstances be held invalid by a court of final resort, such holding shall not effect any part, section, portion, provision or application of this act which can be given effect without the part, section, portion, provision or application so held invalid; and to this end, the parts, sections, portions, provisions and applications hereof are declared severable.

3. Any acts or parts of acts in conflict herewith are hereby repealed to the extent of such conflict.

4. An emergency exists and this act is in force from its passage.

PLAINTIFF'S EXHIBIT 12

[fol. 690]

ADDRESS

OF

THOS. B. STANLEY
GOVERNOR

TO THE

GENERAL ASSEMBLY
MONDAY, AUGUST 27, 1956

[SEAL]

SENATE DOCUMENT NO. 1

COMMONWEALTH OF VIRGINIA
Division of Purchase and Printing
Richmond
1956

[fol. 692]

ADDRESS OF
THOS. B. STANLEY
GOVERNOR
TO THE GENERAL ASSEMBLY
EXTRA SESSION
MONDAY, AUGUST 27, 1956

Mr. Speaker, Mr. President, Members of the Joint Assembly, and Citizens of Virginia:

The people of Virginia, and their elected representatives, are confronted with the gravest problems since 1865. Beginning with decision of the Supreme Court of the United States on May 17, 1954, there has been a series of events striking at the very fundamentals of constitutional government and creating situations of the utmost concern to all of our people in this Commonwealth, and throughout the South.

Because of the events I have just mentioned, I come before you today for the purpose of submitting recommendations to continue our system of segregated public schools.

At the very outset, I want to make perfectly clear that I am speaking to all the people of Virginia, of all races. I also want to be fully understood as to my purpose. I do not seek to take away anything from any Negro or any white person, or to deny him the equal opportunities to which he is entitled. On the contrary, I seek to insure to both white and Negro the enjoyment of full educational opportunities by the preservation of our public school system. Both races have much in which to take pride, but their great heritage has been attained not by commingling of the races but by the development of their many talents among their own people.

We cannot compromise principle for expediency, or sacrifice rights for what may appear to be temporary advantages.

We must take our position on the basis of what is right and is in keeping with the will of the people—the source

of all law and all government predicated upon the principles enunciated in our Constitution.

Since May 1954 many important steps have been taken toward meeting the pyramiding problems originating with the unwarranted action of the Supreme Court. In August 1954 I appointed a Commission on Public Education, composed of thirty-two members of the General Assembly and charged with the duty of studying the effects of the court decision on Virginia and methods of dealing with them. While this study was underway, I met with the State Board of Education in June 1955 and, after a joint review of conditions, we agreed upon the policy that the public schools should continue their operations in 1955-56 as theretofore. [fol. 693] The Commission on Public Education made its report on November 11, 1955, after extensive study and investigation. A special session of the General Assembly was convened on November 30, 1955, and authorized a referendum on amending Section 141 of the State Constitution, as recommended by the Commission. On January 9, 1956, the voters of Virginia approved the holding of a constitutional convention to consider the proposed change in Section 141, and the regular session of the Assembly then provided for the election of delegates. The convention was held March 5-7, 1956; it approved and proclaimed an amendment to Section 141, authorizing use of public funds for tuition grants to students attending non-sectarian private schools. In May of this year, I requested the Commission on Public Education to renew its studies in the light of developments since its report of November 1955. The Commission recommended this special session of the Assembly and has endorsed the proposals which I submit today for your consideration.

When I issued the call on July 23 for this special session, I stated that the implications of the Supreme Court decision have become more apparent to the people of Virginia in recent months and that I believed it was the conclusion of the vast majority of our citizens that there should be no mixing of the races in the public schools, anywhere in Virginia. This is supported by the many expressions which have reached me from people from all parts of Virginia, and I should like to add, these expressions have not been con-

fined to members of the white race. I do not know whether you in the Assembly are hearing from constituents throughout your districts as I am here in Richmond. I have never experienced such a widespread and almost unanimous expression, on any subject, from citizens in all walks of life. Their one plea, repeated to me daily by letter, telegram and telephone, is, "Do not permit mixing of the races in our schools."

These entreaties come from the fathers and mothers of children who will be immediately affected by any change in our system of schools, from workers in factories, farmers, bankers, lawyers and business men. There is no doubt they constitute a true cross section of our citizenship.

We have witnessed events outside Virginia which support our view that the best interest of both white and Negro races will be served by continued separation in the public schools. The experience of the District of Columbia, where racial integration has been ordered into effect, is but one example of the unfortunate results of such a misguided policy.

We have an excellent system of public schools in Virginia, for both white and Negro pupils. We have invested many millions of dollars in it and have vastly increased appropriations, both State and local, for its maintenance and operation. We have done this because we realize the importance of education to all our citizens. We want to preserve this system and the opportunities it offers, without discrimination, to members of all races. We are convinced that it can be preserved and operated as an efficient statewide system only by segregation of the races. We likewise are satisfied that we are within our rights, historically and legally, in taking every honorable and constitutional step to retain control and jurisdiction over this cherished system of public education. Our position was confirmed and encouraged by every decision of the Supreme Court of the United States over a period of nearly sixty years, prior to 1954.

[fol. 694] The principal bill which I submit to you at this time defines State policy and governs public school appropriations accordingly. The declaration reads, in part, as follows:

"The General Assembly declares, finds and establishes as a fact that the mixing of white and colored children in any elementary or secondary public school within any county, city or town of the Commonwealth constitutes a clear and present danger . . . and that no efficient system of elementary and secondary public schools can be maintained in any county, city or town in which white and colored children are taught in any such school located therein."

The bill then defines efficient systems of elementary and secondary schools as those systems within a county, city or town in which there is no student body, in the respective categories, in which white and colored children are taught. Following these definitions is this further declaration:

"The General Assembly, for the purpose of protecting the health and welfare of the people and in order to preserve and maintain an efficient system of public elementary and secondary schools hereby declares and establishes it to be the policy of this Commonwealth that no public elementary or secondary schools in which white and colored children are mixed and taught shall be entitled to or shall receive any funds from the State Treasury for their operation, and, to that end, forbids and prohibits the expenditure of any part of the funds appropriated by Items 133, 134, 137, 138 and 143 of this section for the establishment and maintenance of any system of public elementary or secondary schools, which is not efficient."

This policy is in harmony with Section 129 of the State Constitution, which provides that "The General Assembly shall establish and maintain an efficient system of public free schools throughout the State." Manifestly, integration of the races would make impossible the operation of an efficient system. By this proposed legislation, the General Assembly, properly exercising its authority under the Constitution, will clearly define what constitutes an efficient system for which State appropriations are made.

Thus, under terms of this bill, State funds will continue available for public schools throughout the State, as at

present, so long as white and Negro children are not taught in the same schools. The effect of the bill will be to discontinue, by legislative direction, basic State appropriations to the elementary schools of a locality which permits mixing of the races in any one of its elementary schools, or appropriations to the secondary schools of a locality, if persons of the opposite race are admitted to its white or Negro secondary schools. Thus, if the final point of decision should be reached, the bill would permit the continued operation of high schools on a segregated basis, even though the elementary schools of the locality were closed, or the continued operation of the elementary schools, if only the high schools are closed.

Should elementary or high schools of a county, city or [fol. 695] town be closed, the State funds, allocated for the operation of these schools would become available for educational grants to pupils attending non-sectarian private schools in that locality.

Furthermore, if it were demonstrated that the elementary or secondary schools, or both, of a locality in which they had been closed could be reopened on a segregated basis, the State appropriations again would become available immediately for their operation.

Every effort has been made to protect the teachers in our public schools. It is specifically provided that where schools are closed and teachers under contract become unemployed by reason of the closing, State funds will continue available toward payment of their salaries for the duration of their contracts, should they continue unemployed.

In addition to the appropriation bill, which is the key to this program to preserve our schools and continue segregation, the other items submitted for your earnest consideration and action would accomplish the following:

1. Permitting the use of State funds, not distributed to a class of schools as defined in the declaration of policy, because of closure, to pay grants for educational purposes.
2. Authorizing localities in which schools are not operated to raise tax funds or make appropriations

and use same, together with State funds, in payment of grants for educational purposes.

3. Permitting localities in which schools are operated to raise and expend funds for educational purposes and to receive and expend State funds for the same purposes.

4. Providing that no child shall be required to attend a mixed school.

5. Permitting, but not requiring, localities to furnish pupil transportation.

6. Providing for the assignment of teachers by local school boards, instead of the division superintendents.

7. Permitting local school boards to expend funds set aside for school operation for educational grants without first obtaining the approval of the tax levying bodies.

8. Permitting school boards to employ counsel to defend the actions of members.

9. Amending the Virginia Supplemental Retirement Act to provide for retirement coverage of teachers in certain private schools.

10. Authorizing the Attorney General to render legal assistance to school boards in matters related to the commingling of the races in the public schools.

11. Permitting, but not requiring, school boards to maintain schools for nine months.

[fol. 696] 12. Providing for tentative appropriations by the localities for public school purposes; permitting taxes or cash appropriations for educational grants; providing for suspension of payments from local funds to school boards, and making other conforming changes.

Bills incorporating these provisions have been prepared and are transmitted with this message with the request for their introduction and consideration.

All of these measures have been studied by the Commission on Public Education, and recommended for favorable action by the General Assembly.

To members of the Commission on Public Education, I want to express my sincere appreciation for their long and tedious labors. The Commonwealth is indebted to them for their dedicated service, performed at considerable inconvenience and personal sacrifice. I take this occasion to commend every member for the consideration he has given these matters and the conscientious attention devoted to questions of equal concern to each of us. It is my hope the Commission will continue intact and remain available for such further advice and service as conditions may require.

This plan is offered for the preservation of our schools. A distinguished Federal District Judge, George Bell Timmerman, Sr., says this: "The Supreme Court has not yet passed a law which says that it is a crime to maintain separate schools for white and Negro children . . . I do not think the Supreme Court decision requires me to order a school closed simply because it is attended by one race. . ."

There should be no reason to close any school in Virginia under this legislation. If any school is closed, it will be because a person, or persons, of one race seeks to force his way into a school in which the opposite race is taught.

On February 1, 1956, the regular session of the Assembly adopted Senate Joint Resolution No. 3, interposing the sovereignty of Virginia against encroachment upon the reserved powers of this State and appealing to sister States to resolve a question of contested power. Let me repeat, for emphasis, this portion of the resolution:

"Recognizing as this Assembly does, the prospect of incalculable harm to the public schools of this State and the disruption of the education of her children, Virginia is in duty bound to interpose against these most serious consequences, and earnestly to challenge the usurped authority that would inflict them upon our citizens.

"Therefore, the General Assembly of Virginia, appealing to our Creator as Virginia appealed to Him

for Divine Guidance when on June 29, 1776, our people established a Free and Independent State, now appeals to her sister States for that decision which only they are qualified under our mutual compact to make, and respectfully requests them to join her in taking appropriate steps, pursuant to Article V of the Constitution, by which an amendment, designed to settle the issue of contested power here asserted, may be proposed to all the States.

[fol. 697] "And be it finally resolved, that until the question here asserted by the State of Virginia be settled by clear Constitutional amendment, we pledge our firm intention to take all appropriate measures honorably, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers, and to urge upon our sister States, whose authority over their own cherished powers may next be imperiled, their prompt and deliberate efforts to check this and further encroachment by the Supreme Court, through judicial legislation, upon the reserved powers of the States."

That is a clear and firm declaration of policy and purpose on the part of this body, and it stands today as the official position of the General Assembly of Virginia.

This resolution of interposition was approved by 124 member of the Assembly 88 delegates and 36 senators—and with only seven members dissenting—five delegates and two senators. That resolution was thoroughly discussed and agreed to only after mature deliberation.

The proposed legislation recognizes the fact that this is the time for a decisive and clear answer to these questions:

(1) Do we accept the attempt of the Supreme Court of the United States, without constitutional or any other legal basis, to usurp the rights of the States and dictate the administration of our internal affairs? (2) Do we accept integration? (3) Do we want to permit the destruction of our schools by permitting "a little integration" and witness its subsequent sure and certain insidious spread throughout the Commonwealth?

My answer is a positive "No." On the other hand, shall we take all appropriate measures honorably, legally and constitutionally available to us, to resist this illegal encroachment upon our sovereign powers? My answer is a definite "Yes," and I believe it is to be the answer of the vast majority of the white people of Virginia, as well as the answer of a large, if unknown, number of Negro citizens.

My interest, and I know it to be yours, is the welfare of Virginia and all its citizens. The program which I am submitting is designed to promote the best interests of all Virginians, white and Negro, and especially the welfare of the greatest asset of any people, the boys and girls who constitute our future citizenship.

[fol. 698]

PLAINTIFF'S EXHIBIT 13

STUDENTS, BACKED BY PETITION, TO END
STRIKE AT FARMVILLE

By GUY FRIDDELL

News Leader Staff Writer

(Stamp) May 4, 1951

(Handwritten) *Va. Schools*

FARMVILLE, May 4.—Striking Negro high school pupils in Farmville have agreed to return to classes Monday backed by a petition asking the end of racial segregation in Prince Edward County schools.

If the school board does not give satisfactory answer by Tuesday, then two Richmond attorneys say they will file a suit in Federal District Court "enjoining the school board from the enforcement of segregation laws, policies, and practices."

Attorneys Oliver W. Hill and Spottswood Robinson, III, of Richmond, announced the policy amid cheers last night in Farmville's First Negro Baptist Church jam-packed to the choir section.

The Rev. L. R. Griffin advised the 450 pupils "to go back and co-operate 100 per cent," and Robinson said the lawyers would not tolerate any retaliation against the students who walked out of R. H. Moton High School April 23 to protest "inadequate" facilities and the school board's delay in getting a new building.

LITTLE SYMPATHY

Meanwhile farther down Main Street in the other First Baptist Church, the Woman's Missionary Union gathered for its regular meeting, and, according to a dozen of those present, the town's white population has little sympathy with the "strike."

Several remarked that facilities at Moton were "not what they should be," but added that such was the case at white schools, too, and the Negro students were "hurrying things so."

One said that the strike had been inspired by "those Northern teachers," and another added that a senior student had told her he "would go back to school in a barn to graduate."

But in the Negro church seniors, looking far to the future, said that they would give up graduation if their children could have a new school and others insisted that the walk-out had been planned by "just the students—nobody else."

"NO LOAFING"

Despite the two-week walkout, the students declared, there had been "no loafing." Most of them had been studying or doing "off and on jobs" such as mowing lawns, they said.

One of the students, Barbara Downs, addressed the meeting, and declared that students went from normal room temperatures in the main building to "overheated and very cold" rooms in the three temporary additions.

She said that Moton lacked a cafeteria and gym, and there were but four drinking fountains, two of which were out of order.

Robinson said that the two white high schools for a combined enrollment of 384 students were valued at \$592,000 while Moton was valued at \$120,700.

POLL TAX PAYMENTS

"There is just as much, if not more, to do about unwholesome and unequal facilities on the elementary level," he said.

Hill advised the audience to get every Negro over 21 to pay his poll tax and help elect responsible officials.

"There is nothing spectacular about the way democracy works," he said. "You have to live it on the commonplace, everyday level."

[fol. 699]

DEFENDANT'S EXHIBIT 3

Office of
SOUTHWEST REGIONAL COUNSEL
2600 Flora Street
Dallas 4, Texas

December 6, 1955

Mr. Thurgood Marshall
Director and Counsel
NAACP Legal Defense & Educational Fund, Inc.
107 West 43rd Street
New York 36, New York

Dear Thurgood:

In compliance with your request, I hereby submit a program of proposed legal action during the coming year in the five states that comprise the Southwest Region.

ARKANSAS:

1. We have pending a suit recently filed against the Van Buren, Arkansas School Board.
2. Proposed legal action will include:
 - (a) A suit against the Pulaski County Public Schools. Pulaski is the county in which Little Rock is situated. This suit will not include independent school districts.

- (b) A suit against the North Little Rock School District.
- (c) A suit against the Little Rock School District.
- (d) Suits are being planned for the West Memphis area, which is the most difficult area in Arkansas.

LOUISIANA:

1. We have pending suit against Orleans and St. Helena Parishes.
 2. Proposed legal action will include:
 - (a) Suits against three remaining liberal arts colleges.
 - (b) Suits against several trade schools at the secondary level, but owned and operated by the State of Louisiana.
- [fol. 700] (c) Suits against strategically chosen school boards in Eastern Louisiana contiguous to Mississippi.

NEW MEXICO:

Since New Mexico has entered upon what appears to be a good faith program of desegregation, no suits in that state are now in contemplation.

OKLAHOMA:

1. We have a suit pending against the Red Bird Dependent School District, tried before a three-judge court on November 30, and dismissed for want of jurisdiction. The record is now being typed and will be submitted to you for review to determine whether an appeal to the Supreme Court is justified.
2. Proposed legal action will include:
 - (a) A suit against the Vian Independent School District.
 - (b) A suit against the Arcadia Independent School District.

- (c) It is now evident that many of the small school districts in rural Oklahoma have done little or nothing toward integration. At least three suits will be planned against such school districts.

TEXAS:

1. We have suits pending:
 - (a) against the Dallas Independent School District, and
 - (b) against the Mansfield Independent School District . . . now being processed for appeal.
2. Proposed legal action includes:
 - (a) Transportation—We have now the case of a Negro woman who has been arrested, tried and convicted for violating the separate coach ordinance of the City of Austin, Texas. The Texas State Conference of Branches will appeal that case through the state courts in an effort to get the statute knocked out. Other transportation cases or negotiations are planned for Dallas, Houston and other urban areas to completely [fol. 701] test and destroy racial segregation in urban and inter-urban transportation in Texas. This is a must for Texas in 1956.
 - (b) Public Health—Negotiation is now in progress with the Parkland Memorial Hospital in Dallas aimed at the elimination of racial segregation in this institution. If negotiations fail, legal action is in contemplation.
 - (c) Recreation—During 1955 two pivotal suits were won against the City of Beaumont and the City of Fort Worth outlawing racial segregation in public recreation. / We have a statute making racial segregation mandatory in the thirty-odd state owned and operated parks in Texas. We shall undoubtedly strive to test that law in 1956. In the past we have found it extremely difficult

to get persons to undertake to use the sensitive facilities such as restaurants, swimming pools, dance facilities, and the like. We shall continue to press that issue./

- (d) Public Education—We have the following proposed suits:
- (1) A suit against the Wichita Falls Independent School District to be filed this month.
 - (2) A suit against a junior college in Harris County.
 - (3) A suit against the University of Houston.
 - (4) A suit against the Houston Independent School District.
 - (5) We are developing plans for at least five suits in East Texas, in Gilmer, Texarkana and other East Texas areas.
 - (6) A suit against the LaMar State College at Beaumont.

This, in general, defines the legal program in the Southwest Region for 1956. It will certainly not be diminished. There a likelihood that it will be expanded, particularly in Oklahoma and Texas. I hope that this is sufficiently detailed to meet your immediate needs. Necessarily, the pace will be quickened during 1956 because the people are becoming more restive.

Sincerely yours,

U. Simpson Tate

UST:glw

cc: Mrs. L. C. Bates, Mrs. D. A. Combre, Dr. H. W. Williamson, Dr. H. Boyd Hall, Mr. Clarence Laws, Mr. Edwin C. Washington, Jr.

[fol. 702]

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE
20 WEST 40TH STREET, NEW YORK 18, N. Y.
L Ongaere 3-6890

September 26, 1957

Clerk
United States District Court
for the Eastern District of Virginia
Richmond 6, Virginia

Dear Sir:

Re: N.A.A.C.P. v. J. Lindsay Almond, No. 2435

Pursuant to agreement with counsel for defendants, Mr. Wilkins has prepared the information requested, and I am enclosing herewith the following:

- A. Comparison between N.A.A.C.P. income from Virginia and from the country as a whole for the year 1956.
- B. Comparison between N.A.A.C.P. income from Virginia and from the country as a whole for the first 8 months of 1957.
- C. The largest single contribution to the N.A.A.C.P. for the past two years, and the largest single contribution from Virginia.
- D. Income from Virginia by the month for the first 8 months in 1957.
- E. Income from Virginia by the month in 1956.
- F. Payments made to the Virginia State Conference of Branches by the New York Office, 1955, 1956 and 1957.

The above-named items should be added to the record in the above-entitled case as plaintiff's exhibits.

I have this day also sent copies of same to counsel for defendants.

Very truly yours,
/s/ ROBERT L. CARTER
Robert L. Carter
Attorney for Plaintiff

Encl.

[fol. 703]

COMPARISON BETWEEN NAACP INCOME FROM VIRGINIA
AND FROM COUNTRY AS A WHOLE
FOR THE YEAR 1956

Virginia	\$ 50,998.90
Entire Country	598,612.84

[fol. 704]

CURRENT COMPARISON BETWEEN NAACP INCOME FROM
VIRGINIA AND FROM COUNTRY AS A WHOLE
(FIRST 8 MONTHS OF 1957)

Virginia	\$ 38,469.59
Entire Country	425,608.13

[fol. 705]

LARGEST SINGLE CONTRIBUTION TO NAACP
DURING 1956 & 1957

1956—Herbert H. Lehman, New York, N. Y.	\$ 7,000.00
1957—National Links, Inc. (Women's Clubs) Treasurer's Office, Denver, Colo.	\$ 6,800.00*

* Represents \$100.00 each from 68 chapters.

LARGEST SINGLE CONTRIBUTION TO NAACP
DURING 1956 & 1957 FROM VIRGINIA

1956—Virginia Mutual Benefit Life Insurance Co., Richmond, Va.	\$ 250.00*
1957—Virginia Mutual Benefit Life Insurance Co., Richmond, Va.	\$ 250.00*
* Payments on Life Membership of \$500.00	

[fol. 706]

INCOME FROM VIRGINIA FOR THE FIRST 8 MONTHS OF 1957
BY THE MONTH

<i>Month</i>	<i>From Branches</i>	<i>From Other Sources</i>	<i>Total</i>
January	\$ 1,793.40	\$ 114.50	\$ 1,907.90
February	1,644.60	100.50	1,745.10
March	1,946.80	126.50	2,073.30
April	5,971.00	36.70	6,007.70
May	9,724.60	30.79	9,755.39
June	8,588.88	152.00	8,740.88
July	5,732.81	79.50	5,812.31
August	2,068.51	358.50	2,427.01
TOTALS	<u>\$37,470.60</u>	<u>\$ 998.99</u>	<u>\$38,469.59</u>

[fol. 707]

INCOME FROM VIRGINIA FOR THE YEAR 1956

BY THE MONTH

<i>Month</i>	<i>From Branches</i>	<i>From Other Sources</i>	<i>Total</i>
January	\$ 1,330.22	\$ 182.60	\$ 1,512.82
February	1,973.99	150.00	2,123.99
March	4,879.27	12.00	4,891.27
April	9,148.72	57.00	9,205.72
May	9,420.61	4.25	9,424.86
June	11,084.76	63.55	11,148.31
July	4,075.93	7.50	4,083.43
August	1,699.25	49.06	1,748.31
September	1,297.94	309.00	1,606.94
October	2,155.15	27.75	2,182.90
November	1,020.35	122.75	1,143.10
December	1,910.25	17.00	1,927.25
TOTALS	<u>\$49,996.44</u>	<u>\$ 1,002.46</u>	<u>\$50,998.90</u>

[fol. 708]

PAYMENTS MADE TO VIRGINIA STATE CONFERENCE OF BRANCHES

By NATIONAL OFFICE — NAACP
1955, 1956 & 1957

Date	Explanation	Amount	
1955			
2/17/55	Branch Per Capita Tax	\$ 1,000.00	
3/30/55	Voting & Registration Expense	1,000.00	
4/11/55	Branch Per Capita Tax	896.75	
5/26/55	Branch Per Capita Tax	971.50	
7/1/55	Voting & Registration Expense	1,000.00	
9/8/55	Branch Per Capita Tax	1,289.79	
10/24/55	Branch Per Capita Tax	438.95	
	TOTAL — 1955		\$ 6,596.99
1956			
4/15/56	Branch Per Capita Tax	\$ 1,052.79	
5/22/56	Branch Per Capita Tax	1,876.16	
9/13/56	Branch Per Capita Tax	642.20	
10/24/56	Branch Per Capita Tax	4,292.44	
12/18/56	Branch Per Capita Tax	1,431.30	
	TOTAL — 1956		9,294.89
1957			
3/17/57	Branch Per Capita Tax	\$ 464.56	
4/4/57	Voting & Registration Expense	1,500.00	
6/21/57	Thalheimer Award	50.00	
	TOTAL — 1957		2,014.56
	GRAND TOTAL		<u>\$17,906.44</u>

[fol. 709]

Law Offices
HILL, MARTIN & OLPHIN
118 East Leigh Street
Richmond 19, Virginia

OLIVER W. HILL
MARTIN A. MARTIN
JAMES R. OLPHIN

Telephones 2-8033
7-6441

October Seventh
1 9 5 7

Mr. Walkley Johnson, Clerk
United States District Court
Eastern Division of Virginia
Richmond, Virginia

Re: NAACP vs. Almond
C. A. Nos. 2435 and 2436

Dear Sir:

Pursuant to agreement of counsel for all parties, I hereby file with you the following:

Excerpt from the minutes of the Executive Board of the Virginia State Conference of NAACP Branches, February 4, 1951, fixing fees for the employment and compensation of attorneys.

I regret that I neglected to include this with the enclosures in my letter of October 2, to be added to the record in the above-entitled cases as plaintiffs' exhibits.

I have this day mailed copies of this excerpt and this letter to each of the Judges and to counsel for the defendants.

Very truly yours,

/s/ OLIVER W. HILL
Oliver W. Hill

OWH:ews
Enclosure

[fol. 710]
MEMORANDUM

RE: NAACP vs. Almond, Nos. 2435 and 2436

In response to the request of Mr. Gravatt (Tr. p. 54), we submit herewith excerpt from the minutes of the Executive Board of the Virginia State Conference of NAACP Branches, February 4, 1951, fixing fees for the employment and compensation of attorneys:

"General Report: The general report of the Legal Staff was given by Chairman Oliver W. Hill. Cases reviewed were the Martinsville Case, William C. Chance (transportation) case, Isle of Wight rape case and the Jodie Bailey case. Mr. Hill pointed out how each case had helped our cause and made the following recommendations:

- "(a) That greater emphasis be placed on activities of a non legal nature by our member branches.
- "(b) That the State Conference spend more time and money toward educating our branches and the public to take fuller advantage of the court victories won.
- "(c) That both the Conference and the Branches screen the prospective cases more carefully, for economic and other reasons.
- "(d) That the per diem fees for members of the Legal Staff be raised to \$50.00 and that the travel rates be increased from 8¢ to 10¢ per mile, and,
- "(e) That a resolution be passed by the Executive Board which will concur with a similar resolution of the legal staff that all staff attorneys adhere strictly to the policy of the Association.

"Action taken on Legal Staff's Recommendations: The Board was in full accord with the recommendations a, b, and c, and directed the secretary to use whatever methods available to put these recommendations into effect. After an exhaustive discussion on the advantages and disadvan-

tages of recommendations *d* and *e*, it was Motioned by Dr. Henderson that the per diem fee be set at \$60.00 per day and that the mileage rate remain as is, that is 8¢ per mile. Motion was seconded by Mr. Carrington. Mr. Spencer offered the following amendment: That the Conference agree to pay \$60.00 per diem to attorneys as long as such attorneys adhere strictly to NAACP policies. The Amendment was accepted. Motion passed."

[fol. 711]

SUPREME COURT OF THE UNITED STATES

No. 127, October Term, 1958

ALBERTIS S. HARRISON, JR., Attorney General of Virginia,
et al., Appellants,

vs.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED
PEOPLE, a Corporation, and NAACP LEGAL DEFENSE AND
EDUCATIONAL FUND, INCORPORATED.

Appeal from the United States District Court for the
Eastern District of Virginia.

ORDER NOTING PROBABLE JURISDICTION—October 13, 1958

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.